



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MARCH 14, 2012  
CITY COUNCIL CHAMBERS

## AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 3-9-12 TIME 3:20

SERVED BY

RECEIVED BY

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Reg. City Council Meeting – February 29, 2012
9. PRESENTATIONS
  - a) Employee of the Month for March 2012 – Clara Sweeney, Facilities Maintenance. (5 Minutes)
10. ORGANIZATIONAL SESSION
  - a) APPOINTMENT OF MAYOR PRO-TEM
  - b) APPOINTMENT OF CITY COUNCIL COMMITTEES
11. CONSENT CALENDAR
  - a) Bid No. 12/12/B – Salvador Perez Park Improvements and Contract Between Owner and Contractor; Lockwood Construction Company. (Mary MacDonald)
  - b) Request for Approval of Procurement under State Price Agreement – Six (6) Replacement Vehicles for Fire Department; Don Chalmers Ford. (Robert Rodarte)
    - 1) Request for Approval of Budget Increase – State Fire Fund.



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MARCH 14, 2012  
CITY COUNCIL CHAMBERS

- c) Request for Approval of Lease Agreement – Office Space and Shuttle Services at Santa Fe Municipal Airport; RoadRunner Airport Shuttle. (Jim Montman)
  - d) Request for Approval of Grant Application and Agreement – Procurement of Pavement Sweeper, Design Taxiway H Project and Taxiway A Reconstruction Phase 2 for Santa Fe Municipal Airport; New Mexico Department of Transportation Aviation Division. (Jim Montman)
  - e) Request for Approval of Amendment No. 1 to Lease Agreement – Southerly Portion of Burro Alley for Outdoor Seating Appurtenant to Burro Alley Café at 207 W. San Francisco Street; Majed Hamdouni d/b/a Burro Alley Café. (Edward Vigil)
  - f) Request for Approval of Budget Increase – Santa Fe Trails Transit Services on Behalf of North Central Regional Transit District. (Jon Bulthuis)
  - g) Request for Approval of Grant Application – FY 2012/2013 Law Enforcement Protection Fund for Police Department; State of New Mexico Department of Finance, Local Government Division. (Police Chief Raymond Rael)
  - h) CONSIDERATION OF RESOLUTION NO. 2012-\_\_\_\_. (Councilor Bushee)  
Approval of a Resolution Directing Staff to Amend City Water Conservation Incentive Program Policies, Procedures and the City's Website Relating to Water Conservation Device Rebates so that Sangre De Cristo Water Customers are Given Options for Providing Proof of Purchase or Trade for Water Conservation Devices that Qualify for a Rebate. (Brian Snyder)
  - i) Request for Approval of Consideration to Fill Vacant Positions. (Robert Romero)
12. CONSIDERATION OF RESOLUTION NO. 2012-\_\_\_\_. (Mayor Coss and Councilor Bushee)  
A Resolution Opposing HR 7, the American Energy and Infrastructure Jobs Act; and Urging Congress to Pass a Transportation Bill that Supports Our Community.



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MARCH 14, 2012  
CITY COUNCIL CHAMBERS

13. CONSIDERATION OF RESOLUTION NO. 2012-\_\_\_\_. (Councilor Romero, Councilor Wurzbarger, Councilor Calvert)  
A Resolution Supporting the Reduction of Greenhouse Gas Pollution Under the Clear Air Act.
14. MATTERS FROM THE CITY MANAGER
15. MATTERS FROM THE CITY ATTORNEY
16. MATTERS FROM THE CITY CLERK  
Canvass of Election Results – March 6, 2012 Regular Municipal Election
17. COMMUNICATIONS FROM THE GOVERNING BODY

## EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS
- H. PUBLIC HEARINGS:
  - 1) Request from 5 Star ABQ, Inc. for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at 5 Star Burgers, 604 N. Guadalupe, Suites B & C. (Yolanda Y. Vigil)



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MARCH 14, 2012  
CITY COUNCIL CHAMBERS

- 2) Request from National Dance Institute of New Mexico (NDI New Mexico) for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Wine and Champagne at the NDI Dance Barns, 1140 Alto Street which is Located Within 300 Feet of Desert Academy, 311 Camino Alire and Aspen Community Magnet School, 450 La Madera. The Request is for NDI New Mexico's Annual Gala to be held on Saturday, May 5, 2012 from 5:30 p.m. to 11:00 p.m. (Yolanda Y. Vigil)
- 3) Request from Rio Grande School for a Waiver of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Beer and Wine at Rio Grande School, Gilbert Hall, 715 Camino Alire. This Location is also Within 300 Feet of Atalaya Elementary School, 721 Camino Cabra. The Request is for Rio Grande School's Gala Auction to be held on Saturday, March 31, 2012 from 6:00 p.m. to 10:00 p.m. (Yolanda Y. Vigil)
- 4) CONSIDERATION OF BILL NO. 2012-7: ADOPTION OF ORDINANCE NO. 2012-\_\_\_\_. (Councilor Romero)  
An Ordinance Approving a Lease Between the City of Santa Fe and Paseo Parkers LLC, for Approximately 4,965 Square Feet of City Owned Land, Located Within the 700 Block of Paseo de Peralta, Known as Lot 33, In Block 43 of the N.L. Kings Official Map, Filed for Record in Plat Book 1, Page 79, Records of Santa Fe County, NM., for a Parking Area and Landscaping Purposes. (Ed Vigil) **(Postponed at February 29, 2012 City Council Meeting)**
- 5) **Case #2012-017. Appeal.** New Mexico Consolidated Construction Services LLC (Appellant), Appeals the January 10, 2012 Decision of the Historic Design Review Board in Case #H-10-033 Denying Appellant's Application to Remove and Relocate Three Landmark Structures Known as the Joe Montoya House, the Nat A. Chavez House and the Joe F. Abeyta House at 801 Griffin Street, Known as St. Catherine's Industrial Indian School. (David Rasch and Kelley Brennan) **(Postponed at February 29, 2012 City Council Meeting)**
- 6) **Case #2011-140. Appeal.** Liza Williams and D. MacKenzie Diltz, Appeal the November 22, 2011 Decision of the Historic Design Review Board in Case #H-11-131 Denying the Application of Liza Williams for Exceptions to Permit the Painting of Signs and Murals on a Non-Contributing Building and a Yard Wall at 806 Old Santa Fe Trail. (David Rasch and Kelley Brennan)



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MARCH 14, 2012  
CITY COUNCIL CHAMBERS

- 7) **Case #BCD 2011-136.** John Muir Amendment to Railyard Master Plan. Frank Coppler, Applicant, Requests an Amendment to the Railyard Master Plan to Develop Surface Parking on Lease Lot L, the John Muir Building. The Property is in the Railyard Redevelopment Subdistrict of the BCD (Business Capitol District) and Located in the North Railyard Off Alcaldesa Street, Between Gross Kelly Warehouse and the Train Tracks. (William Lamboy) **(Postponed to March 28, 2012 City Council Meeting)**

## ADJOURN

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

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

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

SUMMARY INDEX  
SANTA FE CITY COUNCIL MEETING  
March 14, 2012

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<u>AFTERNOON SESSION</u>		
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved	1
APPROVAL OF CONSENT CALENDAR	Approved [amended]	2
CONSENT CALENDAR LISTING		2-3
APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – FEBRUARY 29, 2012	Approved [amended]	3
<u>PRESENTATIONS</u>		
EMPLOYEE OF THE MONTH FOR MARCH 2012 – CLARA SWEENEY, FACILITIES MAINTENANCE		3-4
<u>ORGANIZATIONAL SESSION</u>		
APPOINTMENT OF MAYOR PRO-TEM COUNCILOR WURZBURGER	Approved	4
APPOINTMENT OF CITY COUNCIL COMMITTEES	Approved	4-6
<u>CONSENT CALENDAR DISCUSSION</u>		
REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – SIX (6) REPLACEMENT VEHICLES FOR FIRE DEPARTMENT; DON CHALMERS FORD	Approved	6-7
REQUEST FOR APPROVAL OF BUDGET INCREASE – STATE FIRE FUND	Approved	6-7
REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO LEASE AGREEMENT – SOUTHERLY PORTION OF BURRO ALLEY FOR OUTDOOR SEATING APPURTENANT TO BURRO ALLEY CAFÉ AT 207 W. SAN FRANCISCO STREET; MAJED HAMDOUNI D/B/A BURRO ALLEY CAFÉ	Approved	7-8

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<p>CONSIDERATION OF RESOLUTION NO. 2012-____</p> <p>APPROVAL OF A RESOLUTION DIRECTING STAFF TO AMEND CITY WATER CONSERVATION INCENTIVE PROGRAM POLICIES, PROCEDURES AND THE CITY'S WEBSITE RELATING TO WATER CONSERVATION DEVICE REBATES SO THAT SANGRE DE CRISTO WATER CUSTOMERS ARE GIVEN OPTIONS FOR PROVIDING PROOF OF PURCHASE OR TRADE FOR WATER CONSERVATION DEVICES THAT QUALIFY FOR A REBATE</p> <p>*****</p> <p>END OF CONSENT CALENDAR DISCUSSION</p> <p>*****</p>	Referred to PUC	9
<p>CONSIDERATION OF RESOLUTION NO 2012-29.</p> <p>A RESOLUTION OPPOSING HR 7, THE AMERICAN ENERGY AND INFRASTRUCTURE JOBS ACT; AND URGING CONGRESS TO PASS A TRANSPORTATION BILL THAT SUPPORTS OUR COMMUNITY</p>	Approved [amended]	9-10
<p>CONSIDERATION OF RESOLUTION NO. 2012-30.</p> <p>A RESOLUTION SUPPORTING THE REDUCTION OF GREENHOUSE GAS POLLUTION UNDER THE CLEAN AIR ACT</p>	Approved	10-11
MATTERS FROM THE CITY MANAGER	None	11
MATTERS FROM THE CITY ATTORNEY	None	11
<u>MATTERS FROM THE CITY CLERK</u>		
<p>CANVASS OF ELECTION RESULTS –</p> <p>MARCH 6, 2012 REGULAR MUNICIPAL ELECTION</p>	Approved	11-12
COMMUNICATIONS FROM THE GOVERNING BODY	Information/discussion	12-17
<u>EVENING SESSION</u>		
CALL TO ORDER AND ROLL CALL	Quorum	19
PETITIONS FROM THE FLOOR		19-20

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<u>APPOINTMENTS</u>		
State-Local Government Historic Review Board	Approved	21
Historic Design Review Board	Approved	21
<u>PUBLIC HEARINGS</u>		
REQUEST FROM 5 STAR ABQ, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISES CONSUMPTION ONLY), TO BE LOCATED AT 5 STAR BURGERS, 604 N. GUADALUPE, SUITES B & C	Approved	21-22
REQUEST FROM NATIONAL DANCE INSTITUTE OF NEW MEXICO (NDI NEW MEXICO) FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/CONSUMPTION OF WINE AND CHAMPAGNE AT THE NDI DANCE BARN, 1140 ALTO STREET WHICH IS LOCATED WITHIN 300 FEET OF DESERT ACADEMY, 311 CAMINO ALIRE AND ASPEN COMMUNITY MAGNET SCHOOL, 450 LA MADERA. THE REQUEST IS FOR NDI NEW MEXICO'S ANNUAL GALA TO BE HELD ON SATURDAY, MAY 5, 2012 FROM 5:30 P.M. TO 11:00 P.M.	Approved	22-23
REQUEST FROM RIO GRANDE SCHOOL FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF BEER AND WINE AT RIO GRANDE SCHOOL, GILBERT HALL, 715 CAMINO ALIRE, CABRA. THE LOCATION IS ALSO WITHIN 300 FEET OF ATALAYA ELEMENTARY SCHOOL, 721 CAMINO CABRA. THE REQUEST IS FOR RIO GRANDE SCHOOL'S GALA AUCTION TO BE HELD ON SATURDAY, MARCH 31, 2012, FROM 6:00 P.M. TO 10:00 P.M.	Approved	23-24



<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
CONSIDERATION OF BILL NO. 2012-7: ADOPTION OF ORDINANCE NO. 2012-14. AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND PASEO PARKERS LLC, FOR APPROXIMATELY 4,965 SQUARE FEET OF CITY OWNED LAND, LOCATED WITHIN THE 700 BLOCK OF PASEO DE PERALTA, KNOWN AS LOT 33, IN BLOCK 43 OF THE N.L. KINGS OFFICIAL MAP, FILED FOR RECORD IN PLAT BOOK 1, PAGE 79, RECORDS OF SANTA FE COUNTY, NM, FOR A PARKING AREA AND LANDSCAPING PURPOSES	Approved	24-26
<u>CASE #2012-017</u> . APPEAL. NEW MEXICO CONSOLIDATED CONSTRUCTION SERVICES, LLC (APPELLANT) APPEALS THE JANUARY 10, 2012, DECISION OF THE HISTORIC DESIGN REVIEW BOARD IN CASE #H-10-033, DENYING APPELLANT'S APPLICATION TO REMOVE AND RELOCATE THREE LANDMARK STRUCTURES KNOWN AS THE JOE MONTOYA HOUSE, THE NAT A. CHAVEZ HOUSE AND THE JOE F. ABEYTA HOUSE AT 801 GRIFFIN STREET, KNOWN AS ST. CATHERINE'S INDUSTRIAL INDIAN SCHOOL	Appeal denied	26-49
<u>CASE #2011-140</u> . APPEAL. LIZA WILLIAMS AND D. MacKENZIE DILTZ, APPEAL THE NOVEMBER 22, 2011 DECISION OF THE HISTORIC DESIGN REVIEW BOARD IN CASE #H-11-131, DENYING THE APPLICATION OF LIZA WILLIAMS FOR EXCEPTIONS TO PERMIT THE PAINTING OF SIGNS AND MURALS ON A NON-CONTRIBUTING BUILDING AND A YARD WALL AT 806 OLD SANTA FE TRAIL	Appeal denied	49-76
<u>CASE #2011-136</u> . JOHN MUIR AMENDMENT TO RAILYARD MASTER PLAN. FRANK COPPLER, APPLICANT, REQUESTS AN AMENDMENT TO THE RAILYARD MASTER PLAN TO DEVELOP SURFACE PARKING ON LEASE LOT L, THE JOHN MUIR BUILDING. THE PROPERTY IS IN THE RAILYARD REDEVELOPMENT SUBDISTRICT OF THE BCD (BUSINESS CAPITOL DISTRICT) AND LOCATED IN THE NORTH RAILYARD OFF ALCALDESA STREET, BETWEEN GROSS KELLY WAREHOUSE AND THE TRAIN TRACKS	Postponed to 03/28/12	77

ITEM

ACTION

PAGE #

ADJOURN

77

**MINUTES OF THE  
REGULAR MEETING OF THE  
GOVERNING BODY  
Santa Fe, New Mexico  
March 14, 2012**

**AFTERNOON SESSION**

A regular meeting of the Governing Body of the City of Santa Fe, New Mexico, was called to order by Mayor David Coss, on Wednesday, March 14, 2012, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the Invocation, roll call indicated the presence of a quorum, as follows:

**Members Present**

Mayor David Coss  
Councilor Rebecca Wurzbarger, Mayor Pro-Tem  
Councilor Patti J. Bushee  
Councilor Christopher Calvert  
Councilor Bill Dimas  
Councilor Carmichael A. Dominguez  
Councilor Peter N. Ives  
Councilor Christopher M. Rivera  
Councilor Ronald S. Trujillo

**Others Attending**

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

**6. APPROVAL OF AGENDA**

**MOTION:** Councilor Trujillo moved, seconded by Councilor Wurzbarger, to approve the agenda as presented.

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

**7. APPROVAL OF CONSENT CALENDAR**

**MOTION:** Councilor Rivera moved, seconded by Councilor Trujillo, to approve the following Consent Calendar, as amended.

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

**For:** Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Absent for the vote:** Councilor Calvert and Councilor Bushee

**CONSENT CALENDAR**

- a) **BID NO. 12/12/B – SALVADOR PEREZ PARK IMPROVEMENTS AND CONTRACT BETWEEN OWNER AND CONTRACTOR, LOCKWOOD CONSTRUCTION COMPANY. (MARY MacDONALD)**
- b) ***[Removed for discussion by Councilor Rivera]***
- c) **REQUEST FOR APPROVAL OF LEASE AGREEMENT – OFFICE SPACE AND SHUTTLE SERVICES AT SANTA FE MUNICIPAL AIRPORT; ROADRUNNER AIRPORT SHUTTLE. (JIM MONTMAN)**
- d) **REQUEST FOR APPROVAL OF GRANT APPLICATION AND AGREEMENT – PROCUREMENT OF PAVEMENT SWEEPER, DESIGN TAXIWAY H PROJECT AND TAXIWAY A RECONSTRUCTION PHASE 2 FOR SANTA FE MUNICIPAL AIRPORT; NEW MEXICO DEPARTMENT OF TRANSPORTATION, AVIATION DIVISION. (JIM MONTMAN)**
- e) ***[Removed for discussion by Councilor Wurzbarger]***
- f) **REQUEST FOR APPROVAL OF BUDGET INCREASE – SANTA FE TRAILS TRANSIT SERVICES ON BEHALF OF NORTH CENTRAL REGIONAL TRANSIT DISTRICT. (JON BULTHUIS)**
- g) **REQUEST FOR APPROVAL OF GRANT APPLICATION – FY 2012/2013 LAW ENFORCEMENT PROTECTION FUND FOR POLICE DEPARTMENT; STATE OF NEW MEXICO, DEPARTMENT OF FINANCE, LOCAL GOVERNMENT DIVISION. (POLICE CHIEF RAYMOND RAE)**

- h) *[Removed for discussion by Councilor Calvert]*
- i) **REQUEST FOR APPROVAL OF CONSIDERATION TO FILL VACANT POSITIONS.  
(ROBERT ROMERO)**

**8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – FEBRUARY 29, 2012**

The following corrections were made to the minutes:

Page 7, Paragraph 9, line 4, correct as follows: "... they did find ~~his~~ this a small..."

Page 26, Paragraph 1, line 1, correct as follows: "~~Linda Bartel~~ Elizabeth Dolly Lujan..."

**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Dominguez, to approve the minutes of the Regular City Council meeting of February 29, 2012, as amended.

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

**9. PRESENTATIONS**

- a) **EMPLOYEE OF THE MONTH FOR MARCH 2012 – CLARA SWEENEY, FACILITIES MAINTENANCE.**

Mayor Coss read the letter of nomination into the record and presented Ms. Sweeney with a plaque and a check for \$100 from the Employee Benefit Committee. He thanked her for her hard work.

Ms. Sweeney thanked Marianne and everyone who had anything to do with getting her this award, and said she enjoys working at the City Hall.

Councilor Trujillo said every time he comes to the City Hall he sees Clara always working with a smile on her face, and congratulated her.

Councilor Dominguez said it is always a pleasure to come to the City Hall, sometimes at odd hours of the evening, and it is always good to see Clara with a smile on her face, and thanked her for all of her hard work.

Councilor Wurzbarger thanked Clara for her hard work, her smile, her diligence and the fact that's she's always here for all of us.

Councilor Ives thanked Clara for her kindness to a new Councilor for pointing him in the right direction during the past few days, and being very understanding while he learns the names of people at City Hall.

## **10. ORGANIZATIONAL SESSION**

A copy of *City Council Appointments March 2012*, is incorporated herewith to these minutes as Exhibit "1."

Mayor Coss welcomed the new Councilors to the Governing Body, commenting he is putting them to work right away.

Mayor Coss made the following appointment:

### **a) MAYOR PRO-TEM – COUNCILOR WURZBURGER**

**MOTION:** Councilor Dominguez moved, seconded by Councilor Trujillo, to approve this appointment.

**VOTE:** The motion was approved on a voice vote with Councilors Dimas, Dominguez, Ives, Rivera, Trujillo and Wurzbürger voting in favor of the motion, none voting against, and Councilors Bushee and Calvert absent for the vote.

Mayor Coss said he is glad to have Councilor Wurzbürger back as the Mayor Pro-Tem, commenting that she does such great work for the City.

### **b) APPOINTMENT OF CITY COUNCIL COMMITTEES**

Mayor Coss submitted the following appointments to City Council Committees for approval:

#### **Finance Committee**

Councilor Dominguez, Chair  
Councilor Calvert  
Councilor Bushee  
Councilor Dimas  
Councilor Ives

#### **Public Works/CIP & Land Use Committee**

Councilor Wurzbürger, Chair  
Councilor Calvert  
Councilor Trujillo  
Councilor Ives  
Councilor Rivera

**Public Utilities Committee**

Councilor Calvert, Chair  
Councilor Trujillo  
Councilor Dominguez  
Councilor Rivera  
Councilor Dimas

**Bicycle and Trail Advisory Committee**

Councilor Bushee, Chair

**Buckman Direct Diversion Board**

Councilor Calvert  
Councilor Dominguez  
Councilor Bushee, Alternate

**City Business and Quality of Life Committee**

Councilor Wurzbarger, Chair  
Councilor Rivera, Vice-Chair

**Community Development Commission**

Councilor Wurzbarger, Chair

**Mayor's Youth Advisory Board – City Council Liaison – non-voting**

Councilor Dimas

**Public Safety Committee**

Councilor Trujillo, Chair

**Regional Juvenile Justice Board**

Councilor Dimas

**Regional Transit District**

Councilor Bushee

**SFMPO Transportation Policy Board**

Mayor Coss  
Councilor Bushee  
Councilor Trujillo

**Solid Waste Management Joint Powers Board**

Councilor Ives  
Councilor Rivera  
Councilor Dimas

**Water Conservation Committee**

Councilor Ives, Chair

**MOTION:** Councilor Wurzburger moved, seconded by Councilor Dominguez, to approve all Committee appointments submitted by the Mayor.

**VOTE:** The motion was approved on a voice vote with Councilors Dimas, Dominguez, Ives, Rivera, Trujillo and Wurzburger voting in favor of the motion, none voting against and Councilors Calvert and Bushee absent for the vote.

Mayor Coss thanked everyone for their willingness to serve and for all of the work they are about to do on behalf of the Community of Santa Fe.

*Councilor Calvert arrived at the meeting*

**CONSENT CALENDAR DISCUSSION**

- 11(b) REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – SIX (6) REPLACEMENT VEHICLES FOR FIRE DEPARTMENT; DON CHALMERS FORD. (ROBERT RODARTE)**  
**1) REQUEST FOR APPROVAL OF BUDGET INCREASE – STATE FIRE FUND.**

Councilor Rivera asked if any of these are take home vehicles.

Mr. Rodarte said no.

Councilor Rivera asked the plan for the vehicles to be replaced.

Mr. Rodarte said that would be a question for the Fire Department.

Deputy Chief Litzenberg said the plan is to replace the fire prevention vehicles, and disburse their vehicles among the other divisions. He said they want to gain consistency in a single division because it helps the fleet and to prepare appropriately. He said most of the vehicles being replaced are beyond usable limits for the Department – two have been wrecked replace and disburse, reiterating this is to gain consistency in the Prevention Division.

Councilor Rivera said then all six vehicles for prevention, and the Deputy Chief said, “I believe that is the plan at this time. Yes.”

Councilor Trujillo said he has been asking for a breakdown of all the vehicles owned by the City – Fire, Police, etc., but he hasn’t received that. He said he wants to do his own analysis, and wants to know the mileage and such. He would appreciate receiving that information as soon as possible.



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

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

**For:** Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Absent for the vote:** Councilor Bushee

**11(e) REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO LEASE AGREEMENT – SOUTHERLY PORTION OF BURRO ALLEY FOR OUTDOOR SEATING APPURTENANT TO BURRO ALLEY CAFÉ AT 207 W. SAN FRANCISCO STREET; MAJED HAMDOUNI D/B/A BURRO ALLEY CAFÉ. (EDWARD VIGIL)**

Councilor Wurzbarger said this has been an ongoing issue. She appreciates the letter she received from John Dressman, Downtown Merchants Association, of March 12, 2012, noting the paragraph in the letter saying, "The City has strengthened regulations regarding signage, illegal posters, banners and sales, and we think this is a great step, although there is much more to do." And he talks about enforcement. She is very proud of this Council's accomplishments, noting the Council has worked very hard on this issue for the past few years, with the advice of the Downtown Merchants. She asked Mr. O'Reilly to brief the Council, noting the letter states that you testified that the owner had broken the sign ordinance this year at our Finance Committee. She would like a clarification as to whether the owner violated the Sign Ordinance, and if so, the circumstances and staff involvement in this process.

Mr. O'Reilly said he hasn't seen the letter to which Councilor Wurzbarger refers. He said at the Public Works Committee meeting, "I believe that I stated that staff had received a report of an alleged violation. We weren't sure whether there was a violation at that time. Since then, we've researched what has gone on with regard to the alleged sign violation. And what happened was, the Lessee came to staff last year and asked some questions about what kinds of signs he could put up, and specifically, according to my staff, he wanted to put up a sign, what we call an informational sign. This would be a sign, like, say you were a restaurant, that doesn't advertise the name of the restaurant, but a small sign that says, 'bakery,' or 'cookies' or 'pizza,' if that happened to be the kind of restaurant you had."

Mr. O'Reilly continued, "Those kind of informational signs we don't require permits for. My staff met with this person last year and explained how big that sign could be and that it could be informational. Apparently, after that, at some point after that, a sign was put up that, in addition to having that informational language on it, it also said Café Paris, which is the name of a business which used to be near those premises. And, apparently that sign was up for a while. Again, an informational sign like that is not something we would require a permit for, but we also don't allow a sign that advertises for a business that actually doesn't exist on the premises."

Mr. O'Reilly continued, "Now, what happened was, after the Public Works Committee meeting, when I told the members of the Committee that we were researching the information about this sign, the lessee was actually there, present at the meeting and immediately went out and took the sign down. The Lessee did come to my staff months before, because he wanted to be in compliance and didn't want to do something that was going to put him out of compliance."

Mr. O'Reilly continued, "So, the way the Land Use Department feels about that is, yes, technically, there could have been, apparently, there was a period of time that this sign was up and it was technically out of compliance, and then was taken down. But, the position of the Department is that the Applicant also made a good faith effort to try and find out exactly what the rules were before he put up the sign."

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

**DISCUSSION:** Councilor Calvert said he is the one that put the provision in the lease that any future violations would be grounds for revocation of the lease. However, in this case, he understands that there may technically have been a violation, but the lessee made a good faith effort to comply. He thinks it is a technicality that caused them to be in non-compliance, so he thinks we shouldn't hold that against them in this case. He said he does believe the lessee understands the gravity and importance of complying with the rules.

Councilor Dominguez said he will support the motion, but this is not the first time we have had issues with this company, and he is hopeful staff will continue to work with them and continue to remind them that you are available to assist them. He said some people will plead ignorance of the law as an excuse, or feel it's better to ask for forgiveness than permission, so he is hopeful the business will make the effort to check in with staff to see that they are in compliance and continue to be in compliance.

Councilor Wurzbarger said, on this point, she understands the history of this property, but she would like to make very clear that it is not the staff's burden to stay on top of this to make sure of whatever changes they intend to make, and whatever is different, but the burden is on the business owner to come to staff to ask the questions.

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

**For:** Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Absent for the vote:** Councilor Bushee

- 11(h) **CONSIDERATION OF RESOLUTION NO. 2012- \_\_\_\_ (COUNCILOR BUSHEE). APPROVAL OF A RESOLUTION DIRECTING STAFF TO AMEND CITY WATER CONSERVATION INCENTIVE PROGRAM POLICIES, PROCEDURES AND THE CITY'S WEBSITE RELATING TO WATER CONSERVATION DEVICE REBATES SO THAT SANGRE DE CRISTO WATER CUSTOMERS ARE GIVEN OPTIONS FOR PROVIDING PROOF OF PURCHASE OR TRADE FOR WATER CONSERVATION DEVICES THAT QUALIFY FOR A REBATE. (BRIAN SNYDER).**

**MOTION:** Councilor Calvert moved, seconded by Councilor Trujillo, to refer this Agenda Item to the next scheduled meeting of the Public Utilities Committee, noting it was supposed to have gone to that Committee last week, but it was canceled due to the lack of a quorum.

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

**For:** Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Absent for the vote:** Councilor Bushee

\*\*\*\*\*

**END OF CONSENT CALENDAR DISCUSSION**

\*\*\*\*\*

12. **CONSIDERATION OF RESOLUTION NO 2012-29 (MAYOR COSS AND COUNCILOR BUSHEE). A RESOLUTION OPPOSING HR 7, THE AMERICAN ENERGY AND INFRASTRUCTURE JOBS ACT; AND URGING CONGRESS TO PASS A TRANSPORTATION BILL THAT SUPPORTS OUR COMMUNITY.**

Councilor Calvert said he spoke with Jon Bulthuis today, and he believes HR 7 is virtually dead, but the Senate passed a bill today which would be to our liking. He said we need to modify the Resolution to state something to the effect "A Resolution in support of Senate Bill [whatever it is], and urging the House to adopt the same bill with the same language." He said there is still sentiment on the House side to do what was in HR-7, even if they can't muster the votes to get it through, and they still "might monkey with the senate bill when it comes over."

Mayor Coss asked Councilor Calvert if he would like to send this bill to the Public Works Committee, or if he would like to do the proposed amendment now.

Councilor Calvert said he would prefer to do it now, because there is a deadline at the end of the month that will expire on the current legislation, and he wants something for our U.S. Representatives.

Mayor Coss suggested, "Be It Resolved that the City supports the transportation measure passed by the U.S. Senate."

Councilor Calvert said this would be good.

Councilor Wurzburger asked the City Attorney the parliamentary procedure rules in terms of changing the Resolution as published, commenting she is in support of the change.

Mr. Zamora said, "From a parliamentary basis, I do not see difficulty in amending this. I think another good question would also be with regard to the Open Meetings Act and whether it was properly advertised with such an addition. And the addition is just very complementary to what was advertised. It doesn't change the bill substantively."

**MOTION:** Councilor Calvert moved, seconded by Councilor Wurzburger, to adopt Resolution No. 2012-29, with direction to staff to make the appropriate amendments as expressed in this discussion.

**DISCUSSION:** Mayor Coss thanked Jon and Tomas for working on this. He said some of the whereas go to egregious environmental policies that the City would not support. He said he would like to note particularly the Keystone Pipeline. He said he spoke with Congressman Lujan yesterday and he offered amendments that provided if the pipeline is built that all of the oil produced and refined would have to stay in the U.S., because that's what they say they want it for, but that was not accepted. It is building a pipeline across the United States to export oil, and that needs to be known.

Mayor Coss said, as noted on page 2, line 21, HR-7 tries to incentivize us to privatize our Santa Fe Trails Bus System, to which he is completely opposed. He thanked Jon for keeping up with things that are happening in the realm of public transportation systems.

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

**For:** Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzburger.

**Against:** None.

**Absent for the vote:** Councilor Bushee

**13. CONSIDERATION OF RESOLUTION NO. 2012-30 (COUNCILOR ROMERO, COUNCILOR WURZBURGER, COUNCILOR CALVERT). A RESOLUTION SUPPORTING THE REDUCTION OF GREENHOUSE GAS POLLUTION UNDER THE CLEAN AIR ACT.**

Councilor Wurzburger said she wants to acknowledge that this Resolution wouldn't be before the Council without the strong support of Councilor Romero, and wants to acknowledge her strong leadership role in this regard. She said Councilor Romero said, with respect to her support for this Resolution, "The

City of Santa Fe has taken the lead in addressing climate change over time, and I am pleased to support this effort on a national scale. We can no longer do things incrementally, but must address this on a global scale.”

**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Calvert, to adopt Resolution No. 2012-30.

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

**For:** Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Absent for the vote:** Councilor Bushee.

**14. MATTERS FROM THE CITY MANAGER.**

There were no matters from the City Manager.

**15. MATTERS FROM THE CITY ATTORNEY**

There were no matters from the City Attorney.

**16. MATTERS FROM THE CITY CLERK**

A copy of *City of Santa Fe Regular Municipal Election – March 6, 2012 – Official Results* is incorporated herewith to these minutes as Exhibit “2.”

**a) CANVASS OF ELECTION RESULTS – MARCH 6, 2012 REGULAR MUNICIPAL ELECTION**

Yolanda Vigil, City Clerk, reported the official canvass of Election results, noting there is a copy in the packet. Please see Exhibit “2.” for the specifics of this presentation.

Councilor Calvert thanked Ms. Vigil for another excellent job on this election, noting in addition to the usual election, she had to deal with the public financing issue, plus redistricting, and the election was seamless as usual. He thanked Ms. Vigil and staff for the “well oiled machine,” commenting all of us get spoiled by the way these elections are conducted.

**MOTION:** Councilor Calvert moved, seconded by Councilor Ives, to approve the *City of Santa Fe Regular Municipal Election – March 6, 2012 – Official Results*, as presented by the City Clerk.

**VOTE:** The motion was approved on a voice vote with Councilors Calvert, Dimas, Dominguez, Ives, Rivera, Trujillo and Wurzburger voting in favor of the motion, none voting against, and Councilor Bushee absent for the vote.

Councilor Ives complimented the professionalism of the Clerk's Office, which was fabulous, and the process, from the candidate's point of view, was one which assured getting our reports timely filed. He said prior to the time anytime anything was due – campaign finance reports, petition signatures and such – they had a call on the prior week, as well as the day before. He said clearly the City Clerk's office is deeply interested in the success of the election as a process. He extended thanks to Ms. Vigil and her staff for an excellent job on the election.

Councilor Wurzburger thanked Ms. Vigil, commenting we take it for granted, because we expect it to be perfect and it is. She asked if it would be possible to get a written copy of the numbers, and Ms. Vigil said she would do so.

## **17. COMMUNICATIONS FROM THE GOVERNING BODY**

A copy of "Bills and Resolutions scheduled for introduction by members of the Governing Body," for the Council meeting of March 14, 2012, is incorporated herewith to these minutes as Exhibit "3."

### **Councilor Calvert**

Councilor Calvert had no communications.

### **Councilor Dimas**

Councilor Dimas thanked Yolanda Vigil for doing a fantastic job and keeping everyone in line, noting she is a perfectionist, which he appreciates very much. He said we are very lucky to have her.

### **Councilor Ives**

Councilor Ives said he has no communications, other than to echo Councilor Dimas' remarks and "ditto." He said thanked the voters of the District, and Bob Sarr and Dolly Lujan the other candidates for running a race which was totally focused on the issues, which resulted in a highly spirited race "which was fabulous." He said he was, however, disappointed with the voter turnout. He hopes there are things/ideas which he can bring to this body to stimulate the populace to come out and vote, because "in my mind, 20% just doesn't cut it, given the privilege we have of voting."

### **Councilor Rivera**

Councilor Rivera said he would echo the previous remarks regarding Ms. Vigil, remarking "she's great." He said Public Campaign Financing is something new and he had to call Yolanda often to be sure "I was in the right spot, doing the right thing. Her staff and her office is great." He thanked Mr. Zamora, noting he had to make some "split decisions," and did a great job. He said it was a fairly clean race, which he appreciated. He said everyone in his District has removed the campaign signs already, noting he hasn't seen any signs.

Councilor Rivera said on Saturday, March 24, 2012, at 11:00 a.m., the Southside Library is holding its 5<sup>th</sup> anniversary celebration at the Library, and urged the Council and public to attend.

### **Councilor Trujillo**

Councilor Trujillo said, "Ditto Yolanda. We know you always do a fabulous job."

Councilor Trujillo wished Vicenta Martinez, his wife Amber's grandmother, a happy 101<sup>st</sup> birthday, noting she has lived in Santa Fe her entire life.

Councilor Trujillo wished his daughter, Krystianna, good luck this weekend in her cheer competition in Albuquerque.

Councilor Trujillo extended congratulations and welcome to his new colleagues on the Council, commenting he looks forward to working with them.

Councilor Trujillo said on March 19, 2012, Monday, at 1:00 p.m., at Fort Marcy, there will be a ribbon-cutting ceremony welcoming the Santa Fe Fuegos, and invited everyone to attend, noting he will send an email to the Councilors. He said it is cosponsored by the Chamber of Commerce. Councilor Trujillo said the first game is scheduled for May 8, 2012, at 7:00 p.m., which will be versus the Trinidad Triggers.

### **Councilor Dominguez**

Councilor Dominguez welcomed the new Councilors, and said he looks forward to working with all 3, as well as the incumbent Councilors. He said, although we lose almost 30 years of experience, we are gaining some wisdom.

Councilor Dominguez said he has been contacted by a gentleman regarding an initiative entitled "White House Young American Series." He said the literature says this is, "A Summit of America's most innovative entrepreneurial inspiring young people, addressing the challenges and opportunities of the 21<sup>st</sup> century. This conference, hosted by the White House, will convene key community leaders that are shaping a vision of change locally, nationally and globally." He said Mayor Coss was copied on this email.

He said he contacted them and it sounds as if they want to come to Santa Fe. He said there isn't a site or a date, but he is hoping with Mr. Romero's support and assistance we can get Community Services to "maybe jump on board," and help with this. He said it is an exciting thing to have Santa Fe highlighted, noting they are looking at 19 communities, and Santa Fe is one of those.

Councilor Dominguez said he sent an email to Mr. Romero, regarding an Innovation Grant, and tomorrow is the deadline to submit an application. He understands staff has been working on this and he asked for a status update of the grant, and what projects would qualify.

### **Councilor Wurzburger**

Councilor Wurzburger welcomed the new Councilors, commenting "I am very energized by your spirit and ideas we've discussed so far." She said, "I really want to thank Councilor Dimas, because now, I'm not the oldest person, or was it Chris that's the oldest person on the Council. We have someone who can provide the proper guidance to the younger Councilors."

Councilor Wurzburger said she said on the list of bills and resolutions for introduction [Exhibit "1"], and she is listed as a cosponsor of a bill with Councilor Bushee which is to address the negotiations with Santa Fe County on the annexation, noting it was introduced last year. She said she was not contacted about putting this on the agenda this evening, noting staff has been working very hard over the past 6 months. She said if this bill does go forward, she would like it to reflect some of the other discussions we've had previously, with regard to annexation, so we're not reinventing the wheel. She said, "So, for now, I won't be on this item."

Councilor Wurzburger said there are two community events this weekend which she supports. One is the annual Boys & Girls Club fundraising event, and the Girls School is having its annual event on the same evening at 5:30 p.m. at the Hilton Hotel, which focuses on older women leaders as role models, noting she and former Councilor Romero will be attending both events.

### **Mayor Coss**

Mayor Coss introduced a Resolution establishing a blue ribbon panel whose sole purpose is to develop and recommend a plan to end homelessness in Santa Fe, noting cosponsors are Councilors Dimas, Rivera, Dominguez, Wurzburger, Trujillo, Calvert and Councilor Ives. He said we had a blue ribbon panel about 6 years ago that was going to end homelessness in 5 years, which hasn't been accomplished, but they did accomplish a lot. He said the goal of this task force will be to look at what we did accomplish and to establish the next steps for this effort in the community could be to end homelessness. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "4."



Mayor Coss Introduced the following on behalf of Councilor Bushee:

1. A Resolution directing staff to initiate negotiations with Santa Fe County for the purpose of amending that certain settlement agreement between the City and County to amend the phasing of certain City and County services. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "5."
2. A Resolution amending the designated funding for interim bridge rehabilitation, approved by the Governing Body on November 30, 2011, so that all such designated funding be used, in conjunction with other local, state and federal funding mechanisms, to replace the DeFouri Street Bridge. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "6."

Mayor Coss offered condolences and prayers on behalf of the Governing Body, to Celeste and Rick Valentine on the loss of their son.

Councilor Wurzburger said the service for Josh will be on Saturday, 12:00 noon to 2:00 p.m., at Warehouse 21.

Mayor Coss said there also is a meeting on Saturday sponsored by Councilors Bushee and Calvert at Mary Ester Gonzales Center about the recent homicides in the West Alameda area, noting he will be attending the meeting and encouraging the public to attend. He thanked the Police Department for its diligent work on this, and assured the public that all resources are being put into this right now, and he is hopeful that we will get these criminals off the street very quickly. He asked Mr. Romero to get the notice to the public for that meeting.

*Councilor Bushee arrived at the meeting*

Mayor Coss said he received a letter today that the Santa Fe government website received a Sunny Award winner presented by the editors of *Sunshine Review*, to honor the most transparent government websites in America and our website scored an A transparency grade. He said only 214 of more than 6,000 websites ranked by *Sunshine Review* earned a Sunny Award. He asked Robert Romero to work on honoring Carla Lopez, IT and the Clerk's Office and all who worked on this. He said during the budget process there will be requests for funding to make improvements to the Sunshine aspects of our website.

### **Councilor Bushee**

Councilor Bushee said the electronic billboards are flashing the times for the meeting at Mary Ester Gonzales Center on Saturday.

Responding to Councilor Bushee, Councilor Calvert said he will cosponsor the DeFouri Bridge Resolution, noting this was discussed at Public Works. He said staff is looking at what funding will be needed to do this and whether we have sufficient funds, as well we would get the additional funds.

Councilor Bushee said, "They've got all sorts of funds, and they've decided, at least among themselves, that it would be best to put those funds into one location, and that DeFouri is a priority."

Councilor Calvert said that was discussed at Public Works, noting it is the worst rated bridge in Santa Fe.

Councilor Bushee said a lot of people don't know about the meeting at Gonzales Center, commenting she thought the service for Joshua Valentine was at 2:00 p.m., noting she wouldn't have chosen to have the meeting at the same time.

Councilor Bushee asked what happened to BBER Report being heard at the end of February at Finance. She said she was told when she asked what happened to her Resolution to slow the annexation, that the BBER Report would be available by the end of February and we would be hearing that. She said we never did hear it, and it was surprising and disappointing to find out that it's been in existence all this time and we haven't had a chance to get a copy of it. She asked Mr. Romero to speak to this.

Mr. Romero said the Finance Committee Chair didn't ask that it be put on the agenda.

Councilor Bushee asked why the report was not given to the Council.

Mr. Romero said the BBER Report was in draft form, and there were some changes, noting they got back to Dr. Reymus recently, and the report was sent to *The New Mexican*. He said they were waiting for it to get on the Agenda, but that never happened.

Councilor Bushee said she is slightly surprised by the award for the website. She said at the same time she asked for the background on her Resolution to slow annexation, she was promised that we would be hearing the BBER report, as well that we would have a follow up on the transparency of the audit. She hasn't seen anything on the audit for two months.

Mr. Romero said staff has been working on it, and is ready to present it to Public Works, Finance and the entire Council. He said they have been working on all the transparency issues, commenting he believes we have come a long way, noting everything is complete, including the resolution and staff is ready to move this forward to the Council and any Committee Chair that would like to see it.

Councilor Bushee asked that staff follow up with the BBER report at Finance and would like the Resolution on the agenda as well. She also would like a Public Safety report. She said we have discussed the shift change that was to save money, and she wants that report as soon as possible – a report from the Chief on staffing levels and any savings. She asked the number of vacant positions at the Police Department currently. She requested that all of this be at the Finance Committee as soon as possible.

Chief Leyba said there currently are 19 vacancies, with 4 officers on military leave and 9 on various forms of light duty and other assignments. There are 153 officers on active duty, less the 4 on military leave and 5 on light duty.

Councilor Bushee asked Chief Leyba if he will be prepared to give a report on shifts, recruitment and all the questions we've had for a while, particularly the financial aspects.

Chief Leyba said he do his best to compile the information if she will let him know when it will be needed.

Councilor Bushee asked, if possible, for staff to work with the Transportation Department to advise the public that there will be repaving close to Washington and Bishops Lodge Road, the scheduling and extent of the repaving. She said people are asking why we are passing more bonds and not fixing the potholes. She would like staff to let the public know with more regularity that this is a State Road and we are participating, and will be making changes soon, as well as the timeline, so people aren't surprised.

Councilor Wurzbarger said it is a very positive thing that the City received the transparency award.

Councilor Wurzbarger said, "For the record, I have met twice now, I think, with *The New Mexican* directly on complaints we have received, as well as staff, and I know that procedures and processes are moving forward so we are being more responsive to the requests we've been getting. We're not yet perfect there. On this last issue, with respect to what was brought forward, in terms of the Report, I have spoken to Robert about this, and the Mayor, and we agree that we are going to sit down, and very soon, and write, either in the form of Resolution, or direction to staff, which we will bring to the Council directly, to talk about the process for releasing documents, so we can all go over that. Not only documents in terms of IPRA, but documents to us, such as this report, when do we expect as a Council to see it, and make sure we're all on the same place with respect to that. And I think the Mayor is supportive of this, as is the City Manager and the City Attorney."

Councilor Bushee said, to clarify on the transparency issue, she has spoken with Mr. Zamora about how to implement the Sunshine Portal which was spoken to. "And I guess that's what I mean by our website. I expect we would be up to par with where the State and Albuquerque seems to be, in terms of just releasing information to the public. And I think that is what I would be interested in hearing at Finance – what that would take, the timeline to implement it and the financial aspects to that."

Councilor Calvert suggested that staff issue a press release to help publicize the meeting at the Gonzales Center on Saturday.

Mayor Coss said that has been done.

**END OF AFTERNOON SESSION AT 6:05 P.M**

## **EVENING SESSION**

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

The Evening Session was called to order by Mayor David Coss, at approximately 7:00 p.m. Following the Pledge of Allegiance, salute to the New Mexico Flag, and Invocation, Roll Call indicated the presence of a quorum as follows:

#### **Members Present**

Mayor David Coss  
Councilor Rebecca Wurzbarger, Mayor Pro-Tem  
Councilor Patti J. Bushee  
Councilor Christopher Calvert  
Councilor Dimas  
Councilor Carmichael A. Dominguez  
Councilor Ives  
Councilor Rivera  
Councilor Ronald S. Trujillo

#### **Others Attending**

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

### **F. PETITIONS FROM THE FLOOR**

Mayor Coss gave each person 2 minutes to petition the Governing Body.

**Peter Komis** congratulated the new Councilors, Judge Yalman, and all those who ran for office. He said the campaigning at intersections is distracting, noting he almost ran into someone while looking at the people holding up campaign signs and balloons, noting the sun was setting at that time. He said the City has an Ordinance prohibiting the use of a cell phone while operating a vehicle to prevent distracted drivers. He said he is petitioning the Governing Body to look at a different way to present our campaigns and our candidates instead of on the side of the road on busy streets. He suggested the Council consider an Ordinance to this effect, saying he doesn't want to infringe on anyone's rights.

**Cindy Katz, Chair, Santa Fe Coalition for Good Government**, a non-partisan group of citizens who came together last spring when the City tried to "raise our property taxes again." Ms. Katz read a prepared statement into the record regarding the suppression of UNM's Bureau of Business Economic Research Report analysis of Annexation Phases 2 and 3, as follows: "According to the article in *The New Mexican* earlier this week, you have had this report in your possession since February. I was shocked to

find this out from the newspaper. Why did it take *The Santa Fe New Mexican* filing a public information request with you before they could obtain it. Why did you not release this information to the public before the March 6<sup>th</sup> election. Why did you propose to the voters that they authorize \$3.5 million for a new fire station that the BBER Report says is not cost effective. And how can you talk, again and again, about how transparent this Council has been in light of this suppression of this report. We hope that the re-elected Councilor Bushee and the three newly-elected Councilors Dimas, Rivera and Ives, will set an example to transparency for the citizens of Santa Fe. We hope you, Mr. Mayor and the other Councilors will join them."

**Dan Stone, District 2**, said he lives along the right-of-way for the New Mexico Rail Runner. He said, "I met now Councilor Ives last Tuesday. I saw him on the street on Alta Vista and told him I just voted for him, and he thanked me and informed me that he was knowledgeable about some things that perhaps many of the people and the City Council aren't knowledgeable about. And that is the out-of-control, unregulated railroad industry in the United States. The New Mexico Rail Runner is absolutely no different. It is a member of this culture. It's a member of the culture, because there's very little regulation in the railroad industry. In Santa Fe, there's hardly any, and there's no oversight by the City whatsoever. And there's some very bad players within this organization that actually use their trains to assault neighbors, to assault people in this community. I'm not exaggerating. I know what I'm talking about. I have dozens of videos to prove this. I called on the City of Santa Fe to try to assemble a "grand jury" to do investigations into the conduct of the people that are operating the Rail Runner and those that are driving these trains through the City in the most uncivil manner imaginable. You people can't imagine, but I think if you were to call together a group that was going to look into this issue, you would see that everything I'm telling you is absolutely correct. Everything. So I would appreciate the support of the City of Santa Fe to do something about this domestic terrorism that exists in our City. Thanks."

**Tomas Rivera, Chainbreaker Collective**, said the Collective is an environmental justice organization with more than 200 members in Santa Fe, much of whom are transit dependent bus riders and bike riders. He said the Collective wants to congratulate the Council on the passage of the two bonds, as well as to welcomed the new Councilors, and particularly to thank you for voting on the Resolution this afternoon opposing HR-7, which is an atrocious bill that would take money from public transportation, devastate the environment and take away civil rights protections when it comes to transit. He said they want to voice some concerns they have with the U.S. Senate's bill, which still takes away environmental protections, and preserves the *status quo* for the most part in transportation on the national level at a time we should be expanding the reach and depth of public transit. He said they appreciate your support for public transportation on that level.

## **G. APPOINTMENTS**

**State-Local Government Historic Review Board** (State of New Mexico Executive Office Building Project).

Mayor Coss made the following appointments to the State-Local Government Historic Review Board:

David Rasch, Historic Preservation Division, Supervising Planner.

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

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

### **Historic Design Review Board**

Mayor Coss made the following appointments to the Historic Design Review Board:

Karen Walker (Old Santa Fe Association) – Reappointment – term ending 01/2014; and  
Sharon L. Woods (Construction Industries) – Reappointment – term ending 01/2014.

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

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

## **H. PUBLIC HEARINGS**

### **1) REQUEST FROM 5 STAR ABQ, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISES CONSUMPTION ONLY), TO BE LOCATED AT 5 STAR BURGERS, 604 N. GUADALUPE, SUITES B & C. (YOLANDA Y VIGIL)**

The staff report was given by Yolanda Y. Vigil, City Clerk, noting the business is not within 300 feet of a church or school. She said there are staff reports in the packet dealing with litter and noise, and staff recommends this business comply with all City ordinances.

### **Public Hearing**

There was no one speaking for or against this request.

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

**MOTION:** Councilor Calvert moved, seconded by Councilor Dimas, to approve the request by 5-Star ABQ, Inc. For a Restaurant Beer and Wine Liquor License (on-premise consumption only), to be located at 5 Star Burgers, 604 N. Guadalupe, Suites B & C.

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

- 2) **REQUEST FROM NATIONAL DANCE INSTITUTE OF NEW MEXICO (NDI NEW MEXICO) FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/CONSUMPTION OF WINE AND CHAMPAGNE AT THE NDI DANCE BARN, 1140 ALTO STREET WHICH IS LOCATED WITHIN 300 FEET OF DESERT ACADEMY, 311 CAMINO ALIRE AND ASPEN COMMUNITY MAGNET SCHOOL, 450 LA MADERA. THE REQUEST IS FOR NDI NEW MEXICO'S ANNUAL GALA TO BE HELD ON SATURDAY, MAY 5, 2012 FROM 5:30 P.M. TO 11:00 P.M. (YOLANDA VIGIL)**

Councilor Ives disclosed that his wife is an attorney, and has done primarily *pro bono* work for the NDI, and recused himself from participation on this Agenda item, and left the room for this Agenda item.

The staff report was given by Yolanda Y. Vigil, City Clerk, noting the business is within 300 feet of Desert Academy, 311 Camino Alire and Aspen Magnet School, 450 La Madera, noting there are letters in the packet from Terry Passalacqua, Desert Academy, and Danny Pena, Principal, Aspen Community Magnet School, stating they have no opposition to this request.

### **Public Hearing**

There was no one speaking for or against this request.

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



**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Calvert, to grant the waiver of the 300 foot location restriction and approve the dispensing/consumption of wine and champagne at the NDI Dance Barns, 1140 Alto Street, for the NDI New Mexico's Annual Gala to be held on Saturday, May 5, 2012 from 5:30 p.m. to 11:00 p.m.

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Recused:** Councilor Ives.

- 3) **REQUEST FROM RIO GRANDE SCHOOL FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION AND APPROVAL TO ALLOW THE DISPENSING/ CONSUMPTION OF BEER AND WINE AT RIO GRANDE SCHOOL, GILBERT HALL, 715 CAMINO ALIRE. CABRA. THE LOCATION IS ALSO WITHIN 300 FEET OF ATALAYA ELEMENTARY SCHOOL, 721 CAMINO CABRA. THE REQUEST IS FOR RIO GRANDE SCHOOL'S GALA AUCTION TO BE HELD ON SATURDAY, MARCH 31, 2012, FROM 6:00 P.M. TO 10:00 P.M. (YOLANDA Y. VIGIL)**

A copy of a letter dated March 12, 2012, to Mayor David Coss and City Councilors, from Bobbie J. Gutierrez, Superintendent, Santa Fe Public Schools, stating "approval from Santa Fe Public Schools" for this request, is incorporated herewith to these minutes as Exhibit "7."

The staff report was given by Yolanda Y. Vigil, City Clerk, noting the business is within 300 feet of Atalaya Elementary School, 721 Camino Cabra, and there is a letter of approval in the packet from Superintendent Gutierrez [Exhibit "7"].

Mayor Coss asked Ms. Vigil the address of Gilbert Hall.

Ms. Vigil said it is 715 Camino Cabra.

Mayor Coss said the caption says "Alire," not "Cabra."

Mayor Coss asked Mr. Zamora if there is a notice issue.

Mr. Zamora said, "There is also a second reference that publishes the proximity to Camino Cabra, also by publishing 721 Camino Cabra, as well as speaking of the 300 foot limit, so I would say there is the opportunity for notice to people within the area of Camino Cabra.

Ms. Vigil apologized for the error, explaining she was racing to get this request submitted on Friday.

### **Public Hearing**

There was no one speaking for or against this request.

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

**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Calvert, to grant the waiver of the 300 foot location restriction and approve the dispensing/consumption of wine and champagne at Rio Grande School, Gilbert Hall, 715 Camino ~~Alire~~ Cabra, for the Rio Grande School's Gala Auction to be held on Saturday, March 31, 2012, from 6:00 p.m. to 10:00 p.m.

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Explaining her vote:** Councilor Bushee said, "You so rarely make an error. Yes."

- 4) **CONSIDERATION OF BILL NO. 2012-7: ADOPTION OF ORDINANCE NO. 2012-14 (COUNCILOR ROMERO). AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND PASEO PARKERS LLC, FOR APPROXIMATELY 4,965 SQUARE FEET OF CITY OWNED LAND, LOCATED WITHIN THE 700 BLOCK OF PASEO DE PERALTA, KNOWN AS LOT 33, IN BLOCK 43 OF THE N.L. KINGS OFFICIAL MAP, FILED FOR RECORD IN PLAT BOOK 1, PAGE 79, RECORDS OF SANTA FE COUNTY, NM, FOR A PARKING AREA AND LANDSCAPING PURPOSES. (ED VIGIL) (Postponed at February 29, 2012 City Council Meeting)**

The staff report was presented by Ed Vigil from the materials in the Council packet, requesting adoption of this Ordinance so the City can enter into the proposed lease with Paseo Parkers, LLC, noting Paseo Parkers has been a lessee with the City for this purpose for a number of years, and this would be an extension of the current use.

Councilor Bushee said Exhibit A is illegible, and asked for a physical location.

Mr. Vigil said it is located south of the intersection of Marcy and Paseo de Peralta, which currently is unimproved, and currently used for parking purposes.

Councilor Ives said the summary page indicates there are restrictions on the use of the property, so the discounted market value is \$119,112, and asked if this is a reflection of those restrictions in terms of the value of the property.

Mr. Vigil said yes, and he did the calculation based on the valuation of the property by the County, discounting it based on a prior appraisal that was done on the property, and utilizing the same basis to establish that value.

Councilor Ives noted the City will receive \$43,910, over the 5 years, and asked if this is a reasonable rental, commenting he wants to avoid any anti-donation clause issues.

Mr. Vigil said it is a reasonable rental, noting this is the existing rate being paid by the lessee with CPI increase of 30% this year. He said the analysis was done to give justification to this request.

Councilor Bushee noted the property is next to a law office, and asked how it is to be used.

Mr. Vigil said primarily for parking for their employees and some of their clients and visitors.

Councilor Bushee asked if it is restricted in its use.

Mr. Vigil said yes, the Lease provides it is to be used only for purposes of parking for its clients and landscaping purposes to maintain the property.

Councilor Bushee said there have been issues in the past with regard to business which are behind another, and asked if there will be conflicts here.

Mr. Vigil said, "That more so is a problem on the other side of the block in the Castillo Place area where the Beds and Breakfasts are located."

Councilor Bushee asked if they monitor their own parking and Mr. Vigil said yes.

### **Public Hearing**

#### **Speaking to the request**

There was no one speaking for or against this request.

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

**MOTION:** Councilor Wurzburger moved, seconded by Councilor Ives, to adopt Ordinance No. 2012-14, and to acknowledge the Role of Councilor Romero in diligently moving this Ordinance through the committee process to bring it forward to the City Council.

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzburger.

**Against:** None.

- 5) **CASE #2012-017. APPEAL. NEW MEXICO CONSOLIDATED CONSTRUCTION SERVICES, LLC (APPELLANT) APPEALS THE JANUARY 10, 2012, DECISION OF THE HISTORIC DESIGN REVIEW BOARD IN CASE #H-10-033, DENYING APPELLANT'S APPLICATION TO REMOVE AND RELOCATE THREE LANDMARK STRUCTURES KNOWN AS THE JOE MONTOYA HOUSE, THE NAT A. CHAVEZ HOUSE AND THE JOE F. ABEYTA HOUSE AT 801 GRIFFIN STREET, KNOWN AS ST. CATHERINE'S INDUSTRIAL INDIAN SCHOOL. (DAVID RASCH AND MARCOS MARTINEZ)**

A Memorandum dated February 12, 2012, with attachments, to Members of the City Council, from Kelley Brennan, Assistant City Attorney, in regard to this Appeal, is incorporated herewith to these minutes as Exhibit "8."

A Definition of Landmark Structure under SFCC §12-1, submitted for the record by Kelley Brennan, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "9."

A 2008 aerial photograph of St. Catherine's Indian School, submitted for the record by Kelley Brennan, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "10."

A series of photographs regarding *The Gonzaga Adobe, Pacheco State Park, CA. 1962*, entered for the record by Allan Watson, are incorporated herewith to these minutes as Exhibit "11."

Two color photographs regarding the efforts to reroof an adobe structure on San Antonio Street, entered for the record by Allan Watson, are incorporated herewith to these minutes as Exhibit "12."

A series of color photographs regarding the efforts to reroof the adobe structure on San Antonio Street, entered for the record by JoAnn McCarthy, are incorporated herewith to these minutes as Exhibit "13."

The staff report was presented by Kelley Brennan, noting the handout of the map of the St. Catherine's campus showing the landmark and other buildings on the campus with a number, which Mr. Rasch will review, especially the 3 casitas which are the subject of discussion this evening. She said Mr. Rasch is also providing a copy of the definition of a Landmark Structure under the Santa Fe City Code [Exhibits "9" and "10" respectively] Please see Exhibits "8," "9" and "10" for specifics of this presentation.

Ms. Brennan noted the Historic Design Review Board Findings of Fact and Conclusions of Law in denying the application to move the 3 casitas, are found on packet page 121. She said Finding of Fact #8, most succinctly expressed the reasons for denying the application. She said the HDRB approval was required for the movement and relocation of the buildings because the casitas are landmarks, thus the definition which was handed out [Exhibit "9"]. Ms. Brennan said, basically, a landmark is the same thing as a significant structure within the Historic Districts, but a landmark building is located outside the Historic Districts.

Ms. Brennan said typically, when the State designates an area outside the Historic Districts as being of historic note, contributing, that is made under State standards and protections, the City Historic Preservation Division, in the person of David Rasch in this case, brings forward for designation by the City as a landmark any of those buildings or other structures. In this case the Council did find certain buildings and structures on the campus to be contributing and most recently, the entire campus was declared to be a district under State law.

Ms. Brennan said once staff brings it forward for status review, the HDRB reviews it and makes a recommendation to the City Council as to status. In this case, the HDRB recommended to the Council that the buildings be designated as landmarks, the Council agreed and declared them as landmarks.

Ms. Brennan said, during the most recent review of this application to relocate the casitas, some of the HDRB members suggested "that they did not believe necessarily that these buildings did qualify for landmarks under our Code and under this definition." As a result, I have provided, in the options listed on page 7, under the heading Conclusions, there is an option to approve the appeal, an option to deny the appeal, and I provided a suggestion that you also could remand the 3 casitas to HDRB for a status review. In which case, they might continue to recommend landmark status or not, and again, the Council would be the deciding body on that."

Ms. Brennan said the Appellants' bases for appeal are found on page 4, under the heading Issues Raised on Appeal, and generally the Appellant claims that neither the City nor the Board specifically had the authority to make the decision about it, noting, "we disagree and my response is on page 5 under the heading Discussion and Analysis."

Ms. Brennan said David Rasch will provide a short overview of the campus and the 3 casitas under discussion tonight.

**David Rasch, Historic Division, was sworn.** Mr. Rasch provided an overview of the campus via overhead [Exhibit "10"], noting the main building is one of largest historic adobes in New Mexico. Please see Exhibit "10." Mr. Rasch noted the buildings in green are the landmarks, the buildings in red are not landmarks, and reviewed the buildings as follows:

Landmark #1 is the main building, 3 stories tall, from 1887, adobe and one of the 3 largest historic adobes in New Mexico.

Landmark #2 is the convent and chapel, 2 story, brick faced, located directly behind Landmark #1..

Landmark #3 is the girls dorm to the south of the Chapel.

Landmark #4 is the recreation hall built in 1917, Spanish Colonial style or Mission Revival.

Landmark #5 is the Junior High School at the south end of the campus, two story on one side and one story on the other, in Spanish Pueblo Revival 1920's.

Landmark #6 was once a house, but was a gift shop when St. Catherine's was operational, built in 1933, Classic Pueblo Revival, center core. The 3 casitas #9, #10 and #11 are proposed to be moved near #6, noting they are planning to demolish #10 and put #11 in its place and #9 and #10 will go in the parking lot, which will be next to #6 if the appeal is granted.

Landmark #7 is the School office building, from 1934 at the south end of the campus.

Landmark #8 is the gymnasium a large single story brick structure from 1938 across from the main structure.

Landmark #9 the Joe Montoya House built in 1925 is more Vernacular Style than Classic Pueblo Style, one of the casitas they want to move.

Landmark #10 is similar, Vernacular Style from 1935, is the Nate Chavez House, with a few alterations, there is a plastic roof on a carport, on one of the casitas.

Landmark #11 is the Joe Abeyta House from 1935, Pueblo Revival. #9, #10 and #11 are located at the north end of the campus, and were built with student labor. Since this was an industrial school, the students learned the adobe arts when they built these 3 casitas. Not only are they landmarks for a physical reasons, but because of the story behind St. Catherine's. #11 is next to #12.

Landmark #12 is the nun's cemetery. 11 to 15 nuns are buried here and their headstones are in the cemetery. There is another headstone for an artist who painted a mural in the main building. The

deed of sale says Landmark #12 shall remain there in perpetuity. The Appellant's has requested, if he gets to sell the property to the federal government for the National Cemetery expansion, this cemetery will remain where it is.

Landmark #21 are the rock walls and gateposts and things like that.

Mr. Rasch said these are all of the Landmark buildings on the campus. He said the casitas are isolated at the north end away from the remainder of the Landmark buildings.

Councilor Dimas asked Mr. Rasch if he has thought of any kind of compromise to the issue that has arisen – any ideas for compromise.

Mr. Rasch said, "I feel like a very small cook in this very large kitchen, so there's a lot of players in this one. But, I've been watching this for a few years now. I did initially recommend all 13 of these Landmarks for status. But as this project has gone along, I have seen that the community is very split. They are either very opposed to any alteration of this campus, or very pro altering it for the other needs. And before you, you have a choice. Approve the appeal to move the casitas toward the center of the campus, deny the appeal, leave them where they are so the campus remains at its current extent, or send these back for a status review of these three structures."

Mr. Rasch continued, "It seems very black and white, it is either yes or no. The only other option I can think of is... the three buildings are landmarked. In my opinion, #11 probably is more worthy of preservation than #9 or #10. But, when we look at the definition of Landmark, it is questionable whether it even rises to that level anymore. In my opinion, if there was a compromise, let go of #9 and #10, leave #11, possibly as a chapel for the nun's cemetery which is remaining there. That would be a non black or white issue if we were to go that way."

Councilor Trujillo asked what is building #4, and Mr. Rasch said it was used as a cafeteria, that's the Mission Revival Building.

Councilor Bushee asked, with regard to the ability or capacity to move any of these edifices, Mr. Rasch to speak on the ability to relocate.

Mr. Rasch said the H-Board denied a case to demolish the casitas and this body upheld that. He said Landmark structures have to be preserved. The historic integrity and historic materials must be preserved by Code because they are landmarks. The H-Board was hoping the buildings could be moved whole, put on a platter and "moved around like a cake," but that would be difficult. He said the other option was to cut the buildings into some sort of pieces and reassembled, and this is what the Appellant was proposing to do. He said the Board felt if a landmark was disassembled, its historic integrity would be destroyed, and felt that wasn't a successful way to move a Landmark building. At that point, he proposed that if they could show they could successfully move a building, to try it with #9 first, and then they would look at #10 and #11.

Councilor Bushee said then the appeal tonight is about moving the buildings.

Mr. Rasch said this is correct, relocating them further down toward the central core of the campus.

Councilor Bushee said a question was asked about a compromise, and a compromise was to cut the buildings, but it was determined that takes away the Landmark status, commenting she wanted to be clear about what the appeal was about. She asked Mr. Rasch, once again, to clarify what the appeal is this evening.

Mr. Rasch said, "The appeal is the denial of the Historic District Review Board to move the buildings from their present location at the north end of the campus, closer to the core, and the denial was based upon disassembly of the structure."

Councilor Bushee said then it isn't about "destruction. It's not about unlandmarking, it's about moving the building."

Mr. Rasch said, "Correct."

Councilor Ives asked Mr. Rasch, "So it is clearer on the record, the buildings marked in red and the items marked in blue, which currently carry no status, what are those?"

Mr. Rasch said the blue buildings are temporary buildings such as trailers. The red buildings are buildings that were not put on the State register, and also not recommended for landmark status by the Historic District Review Board, but they are either prefabricated metal buildings, garages or other buildings which are not meritorious of landmark status, such as #13 and #14. He said #14 is a very large two story brick structure, the boy's dormitory. It is not a landmark because it isn't 50 years old. It is a newer building. He said a lot of those are from the 1970's.

Councilor Ives said Mr. Rasch mentioned State registration, and asked Mr. Rasch which of the buildings carry a State registration versus a City designation.

Mr. Rasch said all of the green items are on the State Register. He said typically when he brings forward a State request, he will mimic what the State has put on the Register.

Councilor Ives said Section 12.1 regarding a Significant Structure speaks to a structure located in a Historic District approximately 50 years old or older, embody distinct characteristics of a type, period or method of construction. He asked Mr. Rasch to describe these buildings in relation to those criteria.

Mr. Rasch said the 3 casitas in question tonight are 50 years old or older, and typify a method of construction because they're adobe. The question is whether they embody distinct characteristics of that type of structure. He said, "Now that I've gone this process for a few years, I look at #9 and #10 and I see them as not distinctive. #11, I'm on the fence with. That's why I came up with that other idea of a



compromise. #11, in my opinion, is a good example of a Pueblo Revival Building. It is not a stunning example."

Councilor Ives said the definition continues to say, "A structure may also be designated as significant for its association with events or individuals that are important on a local, regional national or global level." He asked Mr. Rasch to talk about these structures in the context of those particular issues.

Mr. Rasch said, "What Councilor Ives is talking about are not required characteristics. These are additional items that can bring the status forward. And yes, these items do have that character. They have that story where the students learned the adobe arts by building them, so they do have a regional significance because of that fact."

Councilor Ives asked, "And do they have historical significance in the context of the work done by Catherine Drexel and her Sisters in terms of Santa Fe's history."

Mr. Rasch said, "I would say probably yes, Mayor and Councilors. The St. Catherine's Industrial Indian School is an important campus for several reasons. First of all it was the first campus created to educate Native Americans and African Americans in the country in 1887. It's one of the 3 largest adobes in the State, and also Catherine Drexel herself was canonized. She is one of our few American Saints. So, the campus is quite important. Now the way the casitas play into this role is really the question. Why they're located at the north end of campus, I don't really know. I do know that student labor was used and professors were living there, which is not of as much significance."

Councilor Bushee noted there are members of the Historic Design Review Board in the audience, and asked if they will be allowed to testify this evening.

Mayor Coss said in following precedent we said we wouldn't, but asked Mr. Zamora to comment.

Mr. Zamora said, "As I reported in the November and December timeframe and followed with an Advisory Opinion to all of the adjudicatory bodies acting in a quasi judicial capacity: One, it would be inappropriate pursuant to the case of Albuquerque Commons Partnerships v. City of Albuquerque, which is a New Mexico Supreme Court Case from 2008, in which those bodies are instructed that they must act like a judicial body bound by ethical standards, comparable to those that govern a court in performing the same function. In addition, those members, because they acted in a judicial role at the prior level, cannot shed that judicial robe and come and testify as witnesses. Their voice is through their findings and conclusions and through the record that they preserved at the level before. What is not contained in this Memo, but it was a question asked during my presentation to the Historic Design Review Board, was whether those Historic Design Review Board members should be present during a hearing such as this. Although I did not conclude at the time that it was inappropriate, I did express caution, because one of the options, especially that has been recommended to you is that it go back on remand, and we may have appealable issues as a result of them attending this hearing and hearing evidence that may not be presented before them on remand."

Councilor Bushee said in reading the HDRB minutes she came across a concept called "Integrity of Location," and asked Mr. Rasch if he has dealt with this at a City level, and asked him to give a brief description of that.

Mr. Rasch said "integrity of location," is one of the Secretary of Interior standards, a federal standard, and it is not in City Code, so it would be more relevant to the State's review of this project than the City's.

Councilor Bushee said we have talked about the story of the buildings in relationship to the history, the students and the teachers. She said her recollection of the previous discussion where the buildings were landmarked, it was after a long presentation and a video explaining the history. She asked, "Would that be what we would consider the integrity of location, more about the historicity of the location and the history of the actual location of the building."

Mr. Rasch said, "Yes, and that's really about why these casitas were built at the north end so far away. We may hear testimony tonight about having professors not live so close to the dorms, or for the student projects to be away from the main part of the campus. There could be all these reasons. I don't have that research."

Councilor Bushee said, "So the names of the buildings, the Nate Chavez I think, and the Montoya Building, do we have any history on that, who those individuals were."

Mr. Rasch said they are named for people associated with the institution.

## **Public Hearing**

### **Presentation by the Applicant**

Mayor Coss gave the Appellant 15 minutes to present the case.

John Polk said one of the interesting questions he always had, and never been able to nail down, is that it has always been said the casitas were constructed by students under tutelage of members of the staff of the School. He said, "I have never found any contemporaneous writing that alludes to that, and I would love to see something that was written by someone who was alive at that time who was repeating that historical fact from personal knowledge. This is a long time ago, and I know this has been repeated several times, but no one has ever been able to come up with any type of a contemporaneous writing by someone who was aware of the facts at the time, that specifically made that statement."

Mr. Polk said he would like to address the third option first. He said there is nothing special about these casitas. They are just simple adobe houses of the type that were built all over Northern New Mexico

during this period of time. "Were they located any place else, you would drive by them and never look." There is nothing special about them, there is nothing of significance about them. There is just "nothing, nothing, nothing when you go to them."

Mr. Polk said a further point is that this campus was originally questioned as to its viability back in 1988, when the Sisters formed a committee to decide whether the school was viable because they were in serious financial trouble. That committee served for 10 years. At that time, maintenance was not done. In 1998, the decision was made to sell this property and no maintenance was done.

Mr. Polk said they bought the property in 2006, and a very specific legal issue has been raised as to whether any repair can be done under the current construction of the Ordinance by the Historic Review Board. He said these places are in fairly significant disrepair. He said the compromise is moving these, because under the present circumstances, as we know, the only way these casitas are going to survive is if they are moved. He said they are directly in a location that blocks any development of this property. There is no viable way to develop this property with those 3 structures sitting where they are, and therefore, ultimately they have to go. He said there are several proposals for development, "some by us, some by others, and all of them call for their removal."

Mr. Polk said, "If you look at the definition, the structure must be located in a Historic District. They're not. Be 50 years old or older. They are. And by its distinctive characteristics of a type, period or method of construction. Absolutely not. There is absolutely nothing special about these. And retain a high level of historic integrity with little or no historic alteration. That's not true. They all have been significantly altered, both internally and externally, but they are 3 very small, little houses that were put in the back lot of the School, not associated with the school. It's alleged and I'm not going to argue, that perhaps members of the staff lived in them. Again, I've never seen any contemporaneous writing on that, but that's what the history repetition seems to be."

Mr. Polk said, "Now, let's move on to our specific appeal. The basic reason why this was denied was the construction of the Ordinance by the H-Board, which was in Section 14-5.2(b)(1)(A), and it was because, 'The removal of historical materials... or alteration of features that embody the status will be prohibited.' We do not propose to remove any historic material. Now let me make a serious point here that I think we should all consider. Historic material is not defined in the Code, and the H-Board has taken the position that any material in these casitas is historic material. As a result, we have not attempted any repair to any of these structures because every repair requires removal of some material. We can't repair a broken window without taking the window out and putting a new glass in. And, according to the H-Board, the removal of that broken window, the glass itself is the removal of a historical material."

Mr. Polk continued, "This whole campus is not getting repaired and it's not going to get repaired until this issue is resolved. Now if historic materials is defined to me as something that you can see, like an arch, or something like that, then there is no argument about that, because none of that is supposed to be removed period. We propose to take these in their as in condition and relocate them. We're not removing anything. This is all our property. It's a matter of picking them up and putting them down. The preferred

way to do it is through a disassembly process, because you risk the project less. They're easier to handle. Particularly in the Middle East, they have moved these type of structures, as David suggested, by putting them on a plate. The problem you have with that, if anything goes wrong, it could be catastrophic. Whereas, if you take them apart in logical pieces and reassemble them in another location it's very easy to preserve the integrity of the whole thing. And please remember, these are made of adobe. And that's mud and water. And all you have to do to stick two adobe bricks together is just make them wet. Put one on top of the other and they'll stick themselves. And that's all that has to happen. The rest can be very simply laid back, the joists can be taken out, the walls themselves can be taken down. Everything can be reversed back up, foundation and all. It's no big deal. And we will not remove any material at all. Every single piece of material will be put back, just to avoid the H-Board construction. But as of right now, I am the lawyer for the company, I have advised them to not make any repair whatsoever because any repair will necessitate removing material, and the H-Board says every piece of material is historic."

Mr. Polk continued, "So, let me address the specific things you have in your packet, the bases for our appeal and I would like to address what Ms. Brennan said starting on page 5 of her presentation. And it is our statement that you do not regulate the moving of structures. And you don't, and she agrees with that. And, her statement is, "The Casitas are constructed of adobe, and the Appellant is therefore correct in stating that the removal and relocation are not governed by SFCC Section 7.3. She then goes on to say a building permit is required. I agree with that. But, then she goes on to say because a building permit is required, somehow we suddenly slide from the Building Department into the Historical Preservation Department. Where is the bridge between the requirement for a building permit and the H-Board. The H-Board doesn't review building permits. That's the Building Department. There is no basis for the H-Board being involved in a building permit to move a structure, and there is no nexus between the 7-3 and 14-5.2, or 14-3, and there is no prohibition from our moving it by simply obtaining a building permit, except the building permit won't allow us to, because they say we've got to go to the H-Board and there's no statutory basis for going to the H-Board."

Mr. Polk said, "The second major point is that the relocation consists of the removal. We're not removing anything. Relocating and removal are two totally separate and distinct words and we're talking about a statute here, an Ordinance, that you have passed to regulate. And when you remove something you do one thing, and when you relocate it you do another. When you remove it, you take it away and it's gone. Relocation is just going from one spot to another. And that is exactly what we're doing, and we're going to replicate those things, just relocate them in exactly the same shape they are at the present time. Probably a lot better, because there's some serious problems with them, but we're going to use all the same materials."

Mr. Polk said, "The next question is whether or not the preserving involves the site. Well a landmark has nothing to do with it's site. A landmark is the structure. It's not the ground underneath it. The Washington Monument is the Washington Monument, it's not the ground underneath it. The Washington Monument has a location. We've moved obelisks from Egypt all over the world and they haven't lost their integrity. We have no intention of losing the integrity of these 3 little houses, but I wish you would seriously consider the fact that these are not historic in any way, shape or form. There is no

reason. And the only thing that is coming up here as a result of this, is that the property is undevelopable. These things are right smack dab in the middle, blocking every development plan.”

Mr. Polk continued, “And this Board is going to have to deal with this issue. St. Catherine’s School is located in the City limits of Santa Fe. It’s not going away. And if we don’t resolve this in such a way that the main structures, as we agree with David, those 3 main structures are important, then we’re going to lose the whole thing. Our map, and I believe that was included in your materials, back in December 2004, maintained the integrity of the core campus and that’s what we started out to do before any of this came up, before we even had acquired title. And we’ve been doing nothing but fighting for close to two years, where every effort has been made to block any development of this property. It’s been frozen in time because of it. And the time is now to get it resolved, and I’d like to bring Mr. Archuleta up, who is a civil engineer who has 46 years of experience.”

### **Questioning of Witness Justin Archuleta**

#### **Justin Archuleta, Licensed Contractor, was sworn.**

MR. POLK: Would you state your name sir.

MR. ARCHULETA: Justin Archuleta.

MR. POLK: And what is your profession sir.

MR. ARCHULETA: I’m a licensed general contractor with specialty in masonry and general construction engineering.

MR. POLK: What is your educational background sir.

MR. ARCHULETA: I have a Bachelor of Science Degree in Civil Engineering.

MR. POLK: Where did you obtain your Bachelor of Science Degree in Civil Engineering.

MR. ARCHULETA: The University of New Mexico.

MR. POLK: Have you inspected the 3 structures that are of issue in this.

MR. ARCHULETA: Yes I have.

MR. POLK: Please describe to the City Council how you inspected these.

MR. ARCHULETA: Well, we walked the project and the exterior first of all, and evaluated the outside and the more obvious site conditions. And then we entered the structures and looked inside and evaluated the condition, considering the disrepair that they're in, the time of no maintenance, the effects that it's had, so all that's been considered.

MR. POLK: Have you ever formulated a plan for moving this structure from one part of the property to another.

MR. ARCHULETA: Yes, I have.

MR. POLK: Please describe that for the Board.

MR. ARCHULETA: Again, I believe the only way to do this safely is to componentize the materials that are on site, and move them and just relocate those materials. There's been a lot of damage there and it would be very difficult to move it as a whole.

MR. POLK: In this move will any materials be lost.

MR. ARCHULETA: No. All materials will be used, or if the Building Code... well, we'll pretty much use everything that's there.

MR. POLK: You mention the Building Code. Are these structures.... excuse me, strike that. Let me take a step back. Do these structures appear to be up to the current Building Code.

MR. ARCHULETA: Not at all.

MR. POLK: And, when you move these, is it your plan to, as it sits, to move them in the fashion that they are at the present time.

MR. ARCHULETA: If that is a directive, yes.

MR. POLK: If the City Building Department suggests any alterations, would that be possible.

MR. ARCHULETA: We would have to. We have to do what the City Building Department says.

MR. POLK: Is there any question that these properties, in the relocation supervised by you, will contain all of the historic material that they presently contain.

MR. ARCHULETA: There's no question. They will.

MR. POLK: And they will?

MR. ARCHULETA: Yes.

Mr. Polk said this is the conclusion of his presentation.

### **Questions from the Governing Body**

Councilor Dominguez asked, "Mr. Polk, do you have your testimony that you articulated in writing. Anything that articulates your testimony in writing. Only because I'm trying to remember everything that you said, so I can look at in comparison to the packet."

Mr. Polk said, "Oh, you mean what I just said right now."

Councilor Dominguez said, "Right. Your testimony today."

Mr. Polk said, "No sir. I basically have my notes... we've been going through this for a long time, so I know it pretty well, and I've been referring specifically to parts of the Code and Ms. Brennan's letter."

Councilor Dominguez said, "So you don't have a Memo or a letter or anything that essentially rebuts the response from staff."

Mr. Polk said, "Well, it does to the extent... what do you mean the response from staff."

Councilor Dominguez said, "Well in your testimony tonight, you were referring to some of staff's claims, and I'm just looking for something in writing that articulates that response."

Mr. Polk said, "The testimony before the H-Board very clearly does that sir. If you'll look at the testimony before the H-Board, both I and Mr. Archuleta, and I was under oath before the H-Board."

Councilor Dominguez said, "Then you want to use that testimony as your..."

Mr. Polk said, "Yes. Yes sir, and I have said there will be no loss of historic material period. And there will be no loss of historic material."

Councilor Rivera asked, "Have you ever moved buildings like this before."

Mr. Archuleta said, "Yes, we've moved them."

Councilor Rivera asked, "In whole or in part."

Mr. Archuleta said: "Mostly in parts."

Councilor Rivera asked, "How many parts, buildings of this size, how many parts."

Mr. Archuleta said, "It depends on the configuration of the building, and how the interior framing is done and any number of different forms of construction, dictate what it is. And even adobe has different characteristics in different places. It will come apart sometimes in larger panels, and other times it has to be done in smaller units."

Councilor Rivera said, "Since you've walked these buildings before coming here tonight, how many parts would you estimate it would take to move these buildings."

Mr. Archuleta said, "I would have to do an analysis. I never looked at it quite that way. I really would have to do an analysis of the buildings. It probably would take quite a bit of destructive testing to look under the stucco, etc., and to really analyze the ceiling and the roof frame structure. It would take quite a few, a lot of parts."

Councilor Rivera said, "And you think it's going to take a lot of parts to move them."

Mr. Archuleta said, "Oh, absolutely."

Mr. Polk said, "Once again, we're up against an Ordinance that you have, and to answer your question directly, it would require significant destruction of the structures, which would be a violation of the Ordinance. You can't have it both ways. You can't say that we have to come through with exact engineering which requires stripping off the stucco, and in the same breath say, don't alter the façade. It just can't be done that way. We know exactly what we're doing. Mr. Archuleta has great experience in this area. But, to say specifically, how many pieces, we'd have to peel it like a banana and have it on the ground.... At which point, what do you do now – put it all back where it's presently located. Your question is a very appropriate one, but's unanswerable under the Ordinance as it is presently structured."

Councilor Dominguez said, "Mr. Archuleta, and this is a question for Mr. Archuleta, because this is the word you used, and that was 'compartmentalized.' What is the definition of that, and could that mean, in some cases, adobe by adobe. What is the definition of compartmentalized. It really goes to Councilor Rivera's question."

Mr. Archuleta said, "What we attempt to do, Councilor Dominguez, is to get as large a piece as we can that will fit back together. Now remember, adobe in general, like any masonry has a bond that requires half the adobe to go over the other part. So, most likely, they are adobe by adobe. That's most likely how it will come apart. But, again until you start getting a feel... we don't know the concentration of straw that was used, and the cohesiveness of the particular soil. There's a whole lot of variables that have to be taken into account before we could say for sure."

Councilor Dominguez said, "So then, isn't that integrity... I'll reserve that question, Mayor."



Mr. Zamora said, "Mayor and members of the Governing Body, prior to public testimony, I do want to add to a comment I made earlier, which gives the Council the ability to ask the parties regarding the proceedings before the Historic Design Review Board. So, you've heard some representations by one party or another of what the Historic Design Review Board did previously. That's a representation of one party. You also later will have the opportunity to question the other party and City staff as to whether they agree that is an accurate representation of the Historic Design Review Board's actions below."

### **Speaking to the request**

#### **Everyone speaking to the request was sworn en masse.**

Mayor Coss gave everyone a maximum of 3 minutes to speak to the request.

#### **Tom Spray, 1411 Paseo de Peralta, President, Old Santa Fe Association [previously sworn].**

Mr. Spray said, "Thank you Mr. Mayor and Councilors, for supporting the acquisition of St. Catherine's and the lease to the New Mexico School for the Arts. This plan would protect the setting of this important Santa Fe Landmark, while putting it back into use as a school, would give continuity to the original intent for the institution. The Association urges you to deny the appeal to relocate the 3 buildings on the campus. The H-Board rejected this application in December 2011, and we ask that the Council uphold this decision. This Council has long recognized the importance of these 3 structures, including them in its designation of St. Catherine's as a landmark in 2006. The State of New Mexico places the campus in a historic district and the school grounds have been determined to be eligible for the National Register of Historic Places. The Council has already rejected an appeal for demolition of these structures. Attempting to move adobe brick structures is the equivalent of demolition with the loss of historic materials. It would also destroy the relationships between the property and its surroundings and destroy associations with historic events and persons. The State Historic Preservation Officer [SHPO] has advised the current landowner that moving the buildings would not be an appropriate preservation alternative under federal guidelines. Finally, the City is in the process of obtaining an appraisal of the property with the intention of acquiring this property from its owner. Why authorize such a drastic move at this point in time. Again, we urge you to reject the appeal."

#### **Lynn Clark, President, St. Catherine's Neighborhood Association [previously sworn],**

welcomed the newly elected Councilors, and congratulated "our incumbent District 1 Councilor, Patti Bushee, and greetings to older faces as well." Ms. Clark said, "St. Catherine's is a property rich with the culture and heritage of our Santa Fe. The campus is home to the memories of many Native Santa Feans and New Mexicans. It is especially meaningful to residents of our neighborhood, whose children and families attended school there and who have close ties to the school as it grew along with and beside our neighborhood. The buildings of St. Catherine's are recognized to be of historical significance to our City. Now, there comes a proposal to move 3 of these buildings who were built by the school students themselves in order to facilitate a sale by the property owners. Evidence presented to the H-Board was conclusive enough to show that the buildings could not be moved without likelihood that they would be

destroyed or significantly damaged. That was the basis for denying approval for the move and that same basis is valid today.

Ms. Clark continued, "My second point is, while we are concerned about the damage to these historical structures, we have another concern from our neighborhood, and that is, Attorney Polk spoke about the relocation of these 3 buildings. So, I'll talk about relocation. Where would they be relocated. The campus, as you see from your map, is very dense. Would they be wedged somewhere between the convent and the gymnasium, or would they be stuck in between two other buildings, or just plopped down in the middle of this dense campus. This is of great concern to us as neighbors, because I have seen the plan for the proposed sale of the property and it includes every inch of property up to the size of the buildings themselves. The convent, the gymnasium. It includes every inch of land along the west side of the arroyo at the end of Griffin Street, and including the natural ridge line now that buffers our neighborhood against the noise pollution of busy Highway 285. I believe that it is obvious that no one would be interested in buying the historic buildings with only the land that they stand on, so they would continue to deteriorate until they are gone. The property owner will not be maintaining them, since, after a sale, he would have gotten what he wants from the property. So, on this basis, on a current and on-reaching basis, we urge you to deny this request."

**Allan Watson [previously sworn]** welcomed the new Councilors. He said he is here to provide technical information about moving adobe structures. Two years ago he was elected to the International Scientific Committee on Earthen Architectural Heritage. This is a group of people from 30 countries in the world who work on projects regarding earthen architecture and adobe architecture in particular. He was elected to the body as an expert member, noting there are 66 expert members, with 19 associate members. He said he has been a licensed New Mexico contractor since 1976, and worked for Cornerstones Community Partnership as a volunteer for 15 years and then on the staff, and while on the staff at any given moment he was overseeing approximately 30 projects restoring historic adobe churches in Northern New Mexico and southern Colorado. He said he emailed his fellow committee members and asked them if they knew of any instances in which there had been a successful relocation of an adobe structure, and he is here to tell about the responses he received.

Mr. Watson said, "I got one mini full response and one response that said that it was not probably possible, but he was an engineer registered in California and in New Mexico and he would love to try to design a move, but he knew of none. I did get a reply from a colleague who is a registered architect in Colorado, retired from the Parks Service. He does a great deal of historic work throughout the world, and he told me, he wrote a very good response. Tony wrote, 'I'm in the 3 adobes that were moved, well there was an attempt to move all 3, each of which failed. I know the details of only one of the Gonzaga Adobe, Pacheco State Park, which was moved from the each side of Pacheco Pass near to the top in 1962. The adobe had a stone foundation of sorts, but the structure had some significant basal erosion [inaudible] and probably some rodent infestation."

Mr. Watson, using a series of photographs projected on the overhead [Exhibit "11"], continued, "In any event, a concrete foundation constructed under the building and all four exterior walls, the two gable ends as well as the long walls and other foundations constructed at its new site. Once the foundation work was completed, there was some exterior and interior bracing. The foundation was lifted by a series of steel beams and the move was going along well for a while. There was news coverage of the event in December 1962 and several photographs show the before and after. Suddenly, in the distance, there was a huge cloud of dust when the side walls collapsed. The move was continued, but what was left and I'll show you the last picture you were left with. Just one more slide for you please."

Mayor Coss asked Mr. Watson to wrap up or get someone else to cede their time to him, one of which was Pen La Farge.

Mr. Watson, using a series of photographs projected on the overhead [Exhibit "12"], continued, "This is an unsuccessful effort to reroof an adobe structure in Santa Fe. If you look carefully at this, you will see that there and this is a collapsed wall on San Antonio Street, I couldn't find a single intact adobe in this wall. They took the roof off and two walls came down and now the City of Santa Fe has condemned this property, so it's having to come down. So, I don't think that it's going to work, in fact, I'm certain it's not going to work. It is impossible impossible to move an adobe structure, even in the way the applicant proposes to this."

**JoAnn McCarthy** [previously sworn], said she is following Mr. Watson, because she has some more photographs regarding the structure where he showed the rubble on San Francisco Street. [Ms. McCarthy projected the photos on the overhead [Exhibit "13"] She said the house is on the street where she lives, San Antonio Street, and she watched over a period of weeks as they carefully took the roof off, but it just wasn't stable enough. She said first, part of one wall fell down with all of the bracing, and then another fell and injured someone. She said now the City has said the building can be torn down – so everything will come down. She said she thought it would be helpful to see what happens when you're dealing with adobe, it just crumbles.

**Victor Johnson, Architect** [previously sworn], said he has practiced architecture in New Mexico since 1974, and has done a lot of preservation work. He serves as New Mexico's Emeritus Board Member to the National Trust for Historic Presentation. He said they performed a study of more than 600 historic structures in Mexico which received a National Preservation Honor Award, most of those structures, more than 90% were adobe. He said he is confused by the Applicant's request, and doesn't understand the need or justification for moving the structures. He said, "In trying to understand this, there has been a lack of transparency in their planning process. I don't understand what the need is, and what mitigation alternatives have been studied. I've seen no document proposed that the contractor has successfully completed such a move, and I don't see how you could make this determination without these facts. I haven't seen any structural engineering certification of a plan to move these buildings. And, it is a structural engineer, I believe, that is normally necessary for dealing with buildings. A civil engineer deals

with site drainage. And, I've heard nothing discussed about a performance bond being posted to ensure that there will not be permanent damages. It appears to be the wrong conservation concept, and that's what's disturbing and I don't understand. I don't understand why they're being moved at all. One planning study for the cemetery could just incorporate these buildings – you need a flower shop, a coffee shop, a little chapel. Cemeteries often come right up to buildings that are in it. I don't understand this clear cut approach to clearing land. It doesn't make sense.”

Mr. Johnson continued, “And finally, I had a conversation with the Veterans Administration Federal Preservation Officer, and was told that the Veterans Administration cannot, by law, participate in what is called anticipatory demolition. That is a contingent sale, or a sale that anticipates demolition of structures. I do not see how moving these buildings can be viewed as anything other than potential demolition. And I hope you don't get involved in this controversy.”

**Tim Maxwell [previously sworn]**, said he spoke on this topic previously. He said he is an Emeritus Director of the Museum of New Mexico and a former appointee to the State Cultural Properties Review Committee. He said, “I'd like to bring up a point about the National Cemetery and its expansion, because this plays into that expansion. I don't know how this Council feels about it. I know past Councils have stated their support and the City has actually made actions to support expansion of the cemetery. I certainly support it myself. My parents are buried there. And I have to say, should this council decide to allow the relocation of the buildings, as Mr. Johnson said, and I hope it says this in the packet, the National Cemetery Administration said if these historic properties are destroyed, we have to back out of this deal. Your decision could jeopardize expansion of the Cemetery. The State Historic Preservation Office, and I hope this is in your packet, said that relocation is the equivalent of demolition. And it says that quite clearly. Now I realize that the Council has no jurisdiction or really can't be concerned with what federal rulings are, or federal laws, but your actions will affect the outcome.”

Mr. Maxwell continued, “And that brings me to Councilor Bushee's question about integrity of location and I think that the Historic Design Review Ordinance does cover that issue when it talks about the form and use of buildings. I think it's clearly in the domain of the Historic Design Review Board and City Council to think about those issues, and they are important. Patterns and layouts of cities and institutions are important. Spanish law has told us how our City was to be laid-out. We can go to any Spanish-American city in the new world and figure out where the church was, where the Palace of the Governors was, because there were laws about where to lay that out. If you just look at the layout of this room, we see a crowd facing a smaller group of people, obviously there's a layout that suggests that people were interested in what the smaller group had to say. So, these layouts are important. Mr. Rasch said he wasn't sure why these buildings were to the north, but for an important reason, I'm sure. And I think that the ordinance given that these were ways to escape the noise of student life, or for visitors to have a pleasant experience staying. I think those are valid reasons for building to the north and a valid reason for preventing the demolition of these, besides, if they are moved into the other area, then you destroy the integrity of that area, the layouts that the nuns and priests saw for the school.”

**Lois Snyderman, on behalf of the New Mexico Historic Preservation Alliance**, which is a statewide preservation organization, noting last year it added St. Catherine's to the list of most endangered properties, because the school is so important and because it seems clear that it is and was extremely endangered. She said, "What I'd like to point out is that there is no logical reason to approve the appeal, but there seem to be plenty of reason to deny it. First of all, the buildings on the campus are important as a whole. The campus is important as a whole. All of the buildings contribute to the landmark status, so no one should say these casitas are not important. It doesn't matter whether they removed or moved, it is important, because they are part of the whole. Secondly, to even try to moves these buildings seem tantamount to destroying them. There does not seem to be any evidence that you can move them successfully. What you will have is a pile of adobe dust and some broken bricks that all will have to be put back together. That's not preservation. Thirdly, the various organizations and individuals who are interested in St. Catherine's and its preservation and its future have asked over and over again that the developer, the owner, provide a plan, an overall plan for what he proposes to do with the campus. As far as I know, that's never been submitted. But now there is some interest in its redevelopment and reuse. This would be a very bad time to allow the owner to move these 3 buildings, which, as I said would be tantamount to their demolition. So, on behalf of the New Mexico Heritage Preservation Alliance, I asked that you deny the appeal."

**Pen LaFarge, 647 Old Santa Fe Trail [previously sworn]**, said he gave up some of his time to Mr. Watson, so he will be brief. He welcomed back the City Councilors. He said, "I think it's important to also, as a point, that hasn't been made, to uphold your own boards. The Historic Design Review Board is an important board, and is one of the most crucial boards in Santa Fe. When it makes an informed, enlightened judgement, which I believe it has, I believe it is important for you to uphold the Board, not to undermine it. Furthermore, I don't think there has been a really good plan put forth, predicated upon the establishment of how this building is going to be moved. This is not a good place for a training ground. And most importantly, I want to say that context is everything. It isn't just the buildings individually, it is also the context within which they exist as it is just across the street in Rosario Cemetery where several generations of my mother's family have been buried. So I would like you please to consider upholding the Historic Design Review Board's authority."

**Howard Gershon [previously sworn]**, said his professional credentials are irrelevant and he is representing himself only as a property owner on Griffin Street. He said, "I feel like this is deja vu all over again. We were here several years ago having the same discussion. We're here again tonight and the applicant is claiming that there is no reasonable way to develop the property without removing or relocating these buildings. It seems to me in this center of creativity there has got to be a way to get around this. I recently had a chance to spend some time in Europe and saw buildings that were hundreds of years old that have been redeveloped and rehabed and used in contemporary manners. It seems to me that we haven't seen any evidence that that can't be done here at St. Catherine's, so I would hope that you deny this request."

**Randall Bell, 314 Garcia, [previously sworn]**, congratulated the new Councilors. He said, "First of all I would like to say I will not try to duplicate some of the many comments that were made early, but I wholly agree with all of the individuals who spoke for the upholding of the HDRB's decision. And, just in terms of my background, I'm a member of the Old Santa Fe Association Board, and also served on the HDRB for 6 years. Vic Johnson proposed an interesting question. Why, what is really the reason for moving and demolishing. They already have been denied... well their real desire was to demolish and then that, of course, that was denied. So, now they're trying to move it. It seems highly unlikely that is possible, and I don't believe that the evidence in the record sustains a finding that these buildings can be moved without being substantially impaired and effectively demolished."

Mr. Bell continued, "But, looking to page 42 of the appeal, which is Mr. Polk's letter of September 23<sup>rd</sup>, he states two reasons to do this. The first one is to 'consolidate the structures, which the City has denominated as historic in a more cogent manner.' So, just that reason alone, I find myself scratching my head. I mean what is more cogent than a historic structure's original location, and if it's not cogent, whose subjectivity is going to make a new location better. His second reason is to place the structures on a firm foundation, while elevating their quality. So, my response to that is there is no reason why these buildings cannot be restored and it's frankly preposterous to take the argument that no work can be done on these buildings."

Mr. Bell continued, "He's ordered his clients not to do any work on these buildings, directly contravening the City's letter ordering his client to keep these buildings maintained because they are in a state of demolition by neglect. His argument is, well, we can't change glass because it's historic material. It's preposterous. Buildings throughout the City are constantly renovated, constantly restored with in-kind materials. They simply have to go through the process of getting proper permits through the H-Board and through Land Use. Not a problem. Clearly their intention has been to demolish the buildings. There are many other things I would say, but just to close. I would say that Ms. Brennan's Memo to you I think is very well done, and I think demolishes the arguments of the Appellant. I take one exception with Ms. Brennan's ending of her Memo, and that is the suggestion of the possibility of revisiting the landmark. And I would say that this body does not have jurisdiction over that issue because it was not raised in the appeal. It has been simply not raised in the appeal."

### **Appellant's Closing Statement**

Mr. Polk said, "The reason for moving these buildings down to the campus is that they will go where the demolished buildings are presently located, and it will make the entire campus an integral whole, rather than having them 100 yards away from the nearest adobe structure to the south. And that was the reason for moving them there. The obvious second reason is that we have proposed as you can see by the map, of selling that property on which they are located to the National Cemetery. And the National Cemetery will not buy this property with them sitting there. Period. They have declined that opportunity. We offered it and they said no. And therefore, the property on which they are located is undevelopable at the present time. If those structures are moved to the south, the National Cemetery can purchase that and the whole area there can be part of the National Cemetery as was the original plan."

Mr. Polk continued, "If, on the alternative, the school wants to purchase the property, or the City wants to purchase the property and lease it to the school, it is my understand that those structures are sitting in pre-planned location, of which I think this Council is very privy. They're sitting in the middle of a parking lot, and that's where the parking's going to be. So, if you buy the property, you lease it to the school, they are going to be utterly destroyed. If we move them down to the south, they can be preserved. And that is really the choices you have before you. There's nothing historic about them, other than just saying that they're there. Nobody has shown you a single iota of evidence or even made a statement that there's anything special about these 3 little structures. They're typical adobe structures of the period, there must be 1,000 of them within 10 miles from right here where we sit. They're not preserving anything unique. The main three St. Catherine's buildings are clearly unique, and they should be preserved, but just because something's there doesn't mean it's historic. Just because something's 50 years old doesn't make it historic. Thank you."

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

**MOTION:** Councilor Wurzbarger moved, seconded by Councilor Bushee, to deny the appeal based on the evidence that has been presented to us, and to support the decision of the Historic Design Review Board, on the primary basis that the evidence does not sustain that these buildings can be moved without loss of historic materials and that relocation would be the equivalent of demolition.

**DISCUSSION:** Councilor Bushee said what has been advertised this evening, and she sees the title as an "Application to remove and relocate." However, she heard Mr. Polk say this is relocation versus removal. She also heard Mr. Polk say there is no bridge between landmark status, and why a building permit would mean the H-Board would have to be involved. She said, "My sense of the bridge between the landmark status between the building permit is the actual H-Board, so maybe you can amplify on those things. And then I wanted to speak to the speakers that talked about the federal prohibition of being able to then develop and/or buy the land predicated on the removal or destruction of those adobe structures. Maybe you can answer or amplify on some of those."

Ms. Brennan said, "Your second question is something I also wanted to address. The nexus question. Under Claim 1, the second paragraph, I'm sorry, the sentence addresses both the nexus question and the movement question, and I quote from the second paragraph under Claim 1, on page 5, 'No building or other structure shall be erected, moved – I think moved is a plain word it means pick up here and move there, and could be read as being the same as relocation, but the word moved clearly is in the Ordinance – added to, structurally altered without a building permit issued by the Land Use Department, in conformity with the provisions of Chapter 14.' And Chapter 14, of course, includes Section 14-5.2, which is the Historic Ordinance, so I think that's the nexus. You cannot get a building permit unless you are in compliance with the Historic Design Review Code, and that Code, I have set out for you elsewhere, applies to an alteration of this type, so I think there is a clear nexus and the movement question I think is also resolved by that."

Ms. Brennan continued, "And with respect to the historic material, in fact there is a provision in Code that requires the maintenance of historic buildings and allows replacement in kind when necessary, and there's a process for doing that. So it is not actually accurate to say that nothing can be changed about historic buildings without the kind of change that will destroy its status. And there was a Notice of Violation issued on exactly the maintenance issue, which is pending, and if you had any questions about that, Matt O'Reilly is here and can answer it."

Ms. Brennan continued, "On the definition, Mr. Polk stated that the structure was not located in a historic district. Landmark structures are never located in historic districts; by definition they are outside the districts, but they are treated under the Code the same as a significant building. So, that portion of the definition really is not applicable to a landmark."

Councilor Bushee asked, "Can you just clarify why the title of this case is 'Application to remove and relocate,' when Mr. Polk made a distinction between relocation versus removal."

Ms. Brennan said, "The caption, I think has traveled with this and probably 'remove' does not necessarily say you're going to plant it in another place, and I thought putting the two words in there identified what was actually being requested, and that's really all that was intended, is for it to be a little more descriptive."

Councilor Bushee said, "I don't remember which speaker spoke to the fact that the VA would not be allowed to purchase this land if it were predicated on demolition, essentially of these buildings. Is there somebody that can..."

Ms. Brennan said, "I can speak only generally to that, which is that there are restrictions on federal agencies purchasing properties and then not going through a historic evaluation process that's mandated by federal law and that... I believe they also are not allowed to use others to accomplish that task, whether this would apply in this situation or now, I don't know."

Ms. Brennan continued, "I do have one other comment which is the jurisdiction...."

Councilor Wurzbarger said, "I think, for purposes of clarification, the issue as I heard it, was anticipatory demolition. And that is what we are talking about here. I don't know if that answers your question, or is there anyone from staff who could answer that question."

Councilor Bushee said, "That's why I actually asked Kelley, because she's the attorney."

Ms. Brennan said, "The only thing I can say, is the general comment that I made, which is that they are not allowed to use somebody else to accomplish the end that... in other words, they can't violate it themselves and they can't use someone else to violate it and then acquire it, which is just my very general knowledge."

Councilor Bushee said, "I just want to finish up by saying that you know, there's lot of records, oh, you know the building's only 50 years old. I mean we've established that essentially. The removal and/or



relocation of these buildings would be the destruction of these buildings. And, but, if you look at Building #9, it was built in 1925, building #10 was built in 1935 as was building #11. We've also established the context of the history behind those buildings and their location, not just the actual buildings themselves. And I don't think there's much more to say. I think that the applicant perhaps made the wrong appeal, but if the appeal this evening is simply about the removal and/or relocation of these adobe structures, we saw what that would result in. And so, those are my comments."

Councilor Trujillo said, "I want to revisit the thing on the National Cemetery, because I'm getting two different questions. There is one gentleman saying they won't purchase that land because those buildings will be removed. And, one person saying that the VA won't purchase that. That's a concern of mine, it always has been. It's been my thing, hoping we can get more land for Vets. I don't want this to turn into something that 'I don't want the National Cemetery in my back yard,' as I've seen already in previous Councils and many years back, so I wish we could get some information from the VA as to exactly what their intentions are. Will they buy it with the houses or without the houses. So, I'd like to get some answers on that."

Councilor Trujillo continued, "Okay, dealing with the landmark status, one gentleman talked about it's the building. We're moving it to a new place, it's still staying on the campus, so now its losing its historic integrity."

Ms. Brennan said, "In fact, the Building Code has exceptions for historic structures, so that, although if moved, I think they would have to have a foundation, but they would not have to, for instance, widen doors or do other things that might be required for new construction because there is recognition of the need to preserve the historic quality of the building. And so the Codes do accommodate, and there is New Mexico amendment to the international code that specifically addresses earthen buildings and their preservation, and allows them to be moved, and specifically, there is a provision about moving them with minimal changes, notwithstanding the fact that they would not comply with the Code."

Councilor Trujillo said, "Then once they're moved, they don't comply."

Ms. Brennan said, "The Code basically allows them to be reassembled with things that would not comply with current Code because they're historic. For instance, doors have to be a certain width, this is the one I remember. It would allow a narrower door..."

Councilor Trujillo said he remembers, noting we had discussions years ago about wood, pentile.

Councilor Trujillo said also a lot of people have said the City purchased St. Catherine's, but we haven't bought it.

Councilor Calvert said, "The lawyer for the owner of St. Catherine's, stated that he didn't think there is anything historic about these buildings, but I think, from testimony we've heard, obviously the State and numerous other national organizations agree with our designation. Of course, his original plan was

demolition, which, combined with his feeling that there is nothing historic about them, I think speaks to his intent to care for these buildings. He says that they can be disassembled and moved without any problem. But I think he really has little 'skin in the game,' I guess you would say, because he really doesn't care about these buildings and if he fails in this attempt, it's well like, 'Whoops, well okay, Plan B.' But then their historical value is definitely gone and cannot be recouped, so I don't think there's a good risk reward on our side. And also, I think, you know, in terms of, especially the State designating the whole campus as historic, I think you also have to take into consideration as numerous speakers have talked about, the relationship of buildings to each other is also historic. It's not just a building in and of itself, and in a vacuum – they all relate to each other in a certain manner. And just plopping down wherever suits the developer or the seller best has no historical meaning or context. So those were the comments I wanted to make."

Councilor Ives said, "I just wanted to elaborate on the point made by Councilor Calvert. Specifically, in the definitions of significant structure, it talks about for a structure to be designated as significant, it must retain a high level of history integrity. Not only is it a question of integrity, in terms of the context of where it is moved to, but in my mind, also where it is moved from. And historically, clearly these buildings were placed in the location in which we find them today as a matter of the development of that property over time within the context of the school. And I think their current location, in that sense, is very much a part of that historical integrity which is associated with the property. So I think that's an issue beyond merely the fact of material destruction. You know, I think what folks have said has been pretty definitive on that front, but beyond the mere question of destruction of material, in my mind, the question of the historical integrity of the site speaks to keeping those building in that location. Clearly they are designated as landmarks, and I don't think we're here to question that, and certainly all of the testimony has been that's pretty clearly a correct designation."

Councilor Wurzbarger said, "There is one issue I want to have clarification from our City Attorney, and that is much of the discussion has been as though we were reconsidering the question of whether or not these were indeed historic, and we're not doing that tonight. We are looking at the question on the specific appeal so they could move the buildings and the impact that would have on the integrity and the status. And, did you want to add anything to that, Geno, for purposes of findings of fact."

Mr. Zamora said, "It is very important that you do not... I recommend that you do not consider any testimony relating to the future acquisition of the property, whether it be by this Governing Body or any other. It does not relate to the appeal, and could lead to a conflict of interest if you allow something like that to enter into your decision this evening, so I recommend that you do not consider that as a factor."

**CLARIFICATION THAT THE MOTION INCLUDES ADOPTION OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THIS CASE.** Ms. Brennan said, "As a point of order Mayor, would the motion include the Council's adoption of the Findings of Fact and Conclusions of Law." Mayor Coss said, "The Maker and Second say yes."

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzbarger.

**Against:** None.

**Explaining his vote:** Councilor Dominguez, "I'm going to vote yes, and I just want to say that I really appreciate staff's summary of what is going on, so it made it pretty clear to me during this debate, reading that, so yes.

**Explaining his vote:** Councilor Trujillo said, "As the Ordinance is in Chapter 14, as much as I might not agree, I will vote yes."

*Break – 9:05 p.m. to 9:15 p.m.*

**6. CASE #2011-140. APPEAL. LIZA WILLIAMS AND D. MacKENZIE DILTZ, APPEAL THE NOVEMBER 22, 2011 DECISION OF THE HISTORIC DESIGN REVIEW BOARD IN CASE #H-11-131, DENYING THE APPLICATION OF LIZA WILLIAMS FOR EXCEPTIONS TO PERMIT THE PAINTING OF SIGNS AND MURALS ON A NON-CONTRIBUTING BUILDING AND A YARD WALL AT 806 OLD SANTA FE TRAIL. (DAVID RASCH AND KELLEY BRENNAN)**

Mayor Coss said, "I'm going to recuse myself and turn it over to Councilor Wurzbarger. Eliza Williams is an artist that I collect art... that my wife has collected art from, and we inadvertently had *ex parte* communication about this case, so I think in the best interest of the Governing Body, I'm going to recuse myself."

A copy of a Memorandum dated March 5, 2012, with attachments, to Members of the City Council, from Kelley Brennan, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "14."

A copy of *City Attorney's Office Advisory Opinion*, dated November 21, 2011, to Yolanda Vigil, City Clerk, from Geno Zamora, City Attorney, regarding Advisory Opinion Providing Guidance to City Adjudicatory Bodies Acting in a Quasi-Judicial Capacity, entered for the record by Ann R. Stravalle-Schmidt, attorney for the Appellant, is incorporated herewith to these minutes as Exhibit "15."

A copy of *Cultivating Santa Fe's Future Economy*, Target Industry Report, prepared by Angelou Economics, dated September 2003, entered for the record by Ann R. Stravalle-Schmidt, attorney for the Appellant, is incorporated herewith to these minutes as Exhibit "16."

The staff report was presented by Kelley Brennan. Please see Exhibit "13" for the specifics of this presentation.

Ms. Brennan noted the business is located in the Downtown and Eastside Historic District. The property was cited for allowing murals and signs to be painted on a building and a wall on their property in violation of Historic District standards. The Notice of Violation required the owner to bring the property into compliance or face prosecution, which is a typical Notice Violation, which could result in fines or prison time. There are two ways to comply – modify the existing violation, in this case, paint over the murals and signs and obtain a permit for signs which are permitted under the Code, or seek HDRB approval for exceptions to the Ordinance to permit the murals and signs to remain. She said the owner chose to seek an exception from the HDRB.

Ms. Brennan said, "The HDRB denied the exception request for failure to meet the exception criteria. And you can see, in the Findings of Fact and Conclusions of Law on page 29, Finding of Fact No. 11, and the conclusion, specifically speak to their reasons. The Appellants claim the building is non-contributing and the Ordinance doesn't apply. The Staff analysis on page 5 addresses that. On page 5, the second and third complete paragraphs, discusses the two areas of Code for which they were cited in violation, and both of those are specifically, by their terms, applicable to all, any building or structure in the Historic District. So, whether they are contributing, non-contributing, significant or without status, the rules apply. Any other approach would yield an unusual result because people that were non-status or non-contributing could do whatever they wanted with the buildings and it would obviously affect the look of the entire district."

Ms. Brennan continued, "The second major claim they made is discrimination. There were other murals and signs on adjacent properties. Those, as I describe in the memo, we operate on a complaint basis. We received a complaint about the murals and signs at 806 Old Santa Fe Trail, we cited them for the violation. They complained about these other murals and signs. We cited those people for violations, and both of those other adjacent people painted over the signs and are now in compliance. They chose the first course of action. They have claimed they didn't know the Ordinance prohibited murals and signs and staff analysis on page 6 addresses that. I think most of us have heard, many of us from a policeman, ignorance of the law is no excuse. That's a classic principle of law that applies in this case."

Ms. Brennan said, "They also allege violation of Constitutional rights of free speech, due process of law and equal protection. You can see the staff analysis on the first amendment claim on page 7. I want to read the paragraph that expresses in summary the Constitutional requirements:

'However, not all expression is beyond regulation. The City has the right to regulate speech when it acts within its Constitutionally granted powers to further a substantial government interest if the regulation is content-neutral, and does not go further than it needs to do to achieve its purpose. These interests include esthetic values and economic interests and there is significant case law on those points.'

With respect to the other Constitutional claims, I believe they have not shown what they need to show to meet equal protection or due process claims, and I can address that in more detail if you would like me to later."

Ms. Brennan continued, "And also, they claim that they met the exception criteria. Staff analysis on page 8 looks at the exception criteria and explains why the Board found what it did. Thank you. I'll stand for questions."

## **Public Hearing**

### **Presentation by the Appellant**

Mayor Pro-Tem Wurzburger gave the Appellant 15 minutes to present their case.

**Ann R. Stravalle-Schmidt, attorney for the Appellant, read her statement into the record as follows:**

"I represent Liza Williams, Mac Diltz and the Liza Williams Gallery, and I just want to say welcome to the new members and honorable Council members. We are here to discuss our appeal, I think I would take about 40-45 minutes. I'll try to make it..."

Mayor Pro-Tem Wurzburger said that is extremely long and she should try to make it much shorter.

Ms. Stravalle-Schmidt said, "I'll try to make it much shorter, however, there are some issues here that I'd like to go through, then I'll be calling Liza Williams."

Mayor Pro-Tem Wurzburger said the standard time here is 15 minutes and that's what we need Ms. Stravalle-Schmidt to do.

Ms. Stravalle-Schmidt said, "What we're asking, we respectfully ask the Council to reverse the November 22, 2011 Historic Review Board's decision, denying, in their quasi judicial capacity, an exception for the 806 for the 806 painted murals and painted signage. We are asking this council to grant the exceptions for the painted murals and signage on a noncontributing building and limit the exception to be applicable only within 300 feet and that the applicants be allowed to complete the unfinished murals. Our request limits any concern of the slippery slope argument raised in the City Attorney's Opposition Brief."

Ms. Stravalle-Schmidt continued, "These hand painted murals and mural signs are works of art – pure speech on private residential/commercial property. They are not commercial speech or political speech or in public forum. We appeal the Board's decision and urge a reversal on the following grounds:

1. The hand painted local artists' murals and hand painted local artist signage on 806, a noncontributing structure, are works of art, pure speech, and as such are not subject to the City of Santa Fe's ordinances, and
2. If the murals are found to be subject to such ordinances, the ordinances and the application by the Board abridge the Appellants' First Amendment fundamental right to exercise their free speech as applied, chills the First Amendment rights, not only of the Appellants, but of others in that it improperly delegates unbridled licensing authority, and
3. It abridges the Appellants right to equal protection and to substantive and procedural due process because of the Board's selective enforcement.
4. The ordinances abridge the Appellants' constitutional rights because they act as a prior restraint on speech and are vague and overly broad as applied to the Appellants.
5. And even if this Council were to ignore the constitutional issues presented here, the actions of the Board in this case were arbitrary and capricious and illegal, and
6. The Appellants did indeed meet the criteria, and finally
7. To prevent the manifest injustice in this particular case, the Board should be estopped from denying the exceptions because of decade long inaction of the Board regarding the pre-existing murals in the district, particularly within the immediate area which lead Liza Williams to reasonably rely on their existence and acceptance when purchasing 806 and because of the representations made by the Board's agent prior to the November 22 hearing."

The record before the Council and evidence and testimony tonight will show the following. 806 is a non-contributing building and as such a non-contributing building or structure is, by its definition in the Ordinance, as one that does not exhibit sufficient historic integrity to establish and maintain the character of the historic district."

Ms. Stravalle-Schmidt continued, "Liza Williams purchased 806 in July 2011 for \$800,000, as a fine art gallery to showcase local Santa Fe artists and to expand the economics of art tourism outside the Plaza and Canyon Road area."

Ms. Stravalle-Schmidt continued, "Liza Williams had previously owned a gallery on the Plaza, and although she looked at space on the Plaza and Canyon Road, she decided to purchase this building primarily based on the character of the neighborhood and the preexisting murals, as you can see from the exhibit, existed throughout the Downtown Eastside Historic area, and in particular the murals and painted signs of her immediate neighbors, Cruz Eagleheart Quintana and Cliff's Liquor Store. As you can see from the exhibit and the pictures that we're going to show you, the pre-existing murals in the Downtown Eastside Historic area are similar in material, color, styles and many are larger in size and none under

portals. She had no reason to believe that with so many murals in the area and in other historic districts that murals or painted signage would not be allowed in this district, nor was she informed otherwise by the seller."

Ms. Stravalle-Schmidt continued, "Whether one likes it or not, Santa Fe is a community that depends heavily on art tourism, which touches every strata of Santa Fe life. As Santa Fe native, author, professor, lecturer, Fulbright scholar Andrew Lovato, author of *Santa Fe Hispanic Culture*, preserving identity in a tourist town states, art has always played a profound role in Santa Fe's cultural character."

Ms. Stravalle-Schmidt continued, "According to Lovato, from the early Spanish settlers to the present day murals that were painted by Roberto Guzman and Sam Leyba, art is a very important fact of Santa Fe life. As Lovato stated and as you will find in the Angelou Economic Report, which we will pass out to you, done for the City of Santa Fe in 2003 [Exhibit "16"]. The current impact of art on the local economy cannot be overestimated. The revenue that local art market generates is a major engine in Santa Fe's contemporary economy. Indeed, the two major factors that made Santa Fe a major tourist destination for one million visitors a year are the cultural heritage and history of the City and the art that reflects this legacy."

Ms. Stravalle-Schmidt continued, "According to a report presented by the University of New Mexico's Bureau for Business and Economic Research in 2004, art and culture industries in Santa Fe account for over 12,000 jobs and employ one out of every six workers in the City. The arts in Santa Fe have an economic impact that is six times greater than the national average, making the City one of the largest markets in the U.S. According to the Angelou report, Santa Feans listed art and culture only second to the climate as a reason for being in Santa Fe and what makes Santa Fe special; historic preservation was fourth."

Ms. Stravalle-Schmidt continued, "In this context, in August 2011, Ms. Williams commissioned 6 local artists to paint fine art murals and signage to provide economic support for these artists and to revitalize the neighborhood. Each of these 6 artists received \$500 for their work, some of which have been left incomplete by the red tagging. Now the historical norm has been that gains from tourism are largely enjoyed by outsiders, rather than benefitting the populations of the tourists attractions. Ms. Williams is trying to do something about that, not just by showing local artists work, but by putting these local artists to work, especially in this economic downturn and to spread the art tourism focus beyond Canyon Road."

Ms. Stravalle-Schmidt continued, "Nevertheless, based on an anonymous complaint from a passing motorist, the Board cited and then red tagged the 806 hand painted murals and hand painted signs, even though at that time, Cruz Eagleheart and Cliff's Liquors and all of the murals you see before you, existed. The City's opposition brief points out that due to limited resources, the City enforces these zoning provision on a complaint basis. However, courts have pointed out that there must be specific, objective guidelines on how to apply and enforce local official officials, such as here, from arbitrary actions – actions which give rise to Constitutional protection issues. As a matter of fact, the citing employee spoke to Ms. Williams about the tagging of her 806 murals while standing in front of Mr. Eagleheart's murals."

Ms. Stravalle-Schmidt continued, "I would also like to state for the Council that in our appeal, we stated that we relied on Cruz's murals. That was not a complaint."

Ms. Stravalle-Schmidt continued, "As I go through this presentation to put this matter in context for the Council and as the Council reviews the evidence submitted and listens to the testimony, I would like the Council to keep in mind the City Attorney's November 21, 2011 Advisory Opinion [Exhibit "15"], that a board, like the Historic Review Board, when acting in their quasi-judicial capacity, as they did here, are bound by ethical standards comparable to those which govern a court in performing the same function and that the City Code has formally adopted a higher standard of conduct for an adjudicating board in acting in their quasi-judicial capacity akin to the Judicial Code of Conduct. The Santa Fe Code of Ethics applies a higher standard to public officials and employees acting in such a quasi judicial capacity and prohibits official actions tainted with a decision makers's conflict of interest, bias and prejudice, prejudgement or other conduct creating the actuality or appearance of impropriety."

Ms. Stravalle-Schmidt continued, "I would like the Council to keep in mind that although staff may testify as to facts, as to who, what, when and where, since the Board acting in quasi judicial capacity has already published its decision and findings of that, that is the record before this tribunal. When a board acts in a quasi judicial capacity because of the significant impact it has on those appearing before it, they don't get mulligans, Hail Mary passes or do overs. In this context, the City Attorney's opposition brief points to Findings of Fact that were drafted on January 10<sup>th</sup> [Exhibit C], which the Appellants never received, and which was drafted after the appeal was filed and, per the administrative code, the Findings had already become final, which was 30 days after the November 22<sup>nd</sup> hearing and thus must be disregarded."

Ms. Stravalle-Schmidt continued, "Also, with the Code of Ethics in mind, in September, David Rasch, the Historic Planner Supervisor, came to visit the Liza Williams Gallery as a liaison from the Board, and told Liza he would help them to get the exception. At the time, he did not identify himself as the person who would influence the Board, or who would be recommending and advising the Board as to whether or not to grant an exception. And a review of the Board's minutes over a period of time show that the Board relies heavily on the advice and recommendations of its staff and votes usually according to the staff's recommendations."

Ms. Stravalle-Schmidt continued, "Ms. Williams will testify to the conversation with Mr. Rasch as will Mr. Diltz, during which she questioned if she should be talking to him, and in which he recommended that she not seek counsel for the hearing for the exception because the Board would not like that. And, if she did have counsel, they would deny the exception. He also stated that she could choose which ordinance exception to use. One that had 3 prongs which is 14-5.2(C)(5)(b) entitled Regulation of Significant and Contributing Structures, or another one. She chose the 3 prong test. He also told her in order to get a quicker hearing she should paint over some signs."



Ms. Stravalle-Schmidt continued, "Ms. Williams will testify that she was told that all she had to do was just get up and talk about her passion and answer the 3 points, even though she was told that no one really knows what the third prong, strengthen the unique heterogeneous character of the City by providing a full range of design options to ensure that residents can continue to reside within the Historic District, means. When asked about the murals, she was told brown walls trump everything. Clearly this interaction shows a conflict of interest, bias and prejudice, prejudgment and definitely conduct creating the actuality or appearance of impropriety and has seriously prejudiced the Appellants."

Ms. Stravalle-Schmidt continued, "In good faith, after this visit, Liza did paint over one sign and took down two signs as requested. Ms. Williams will testify that she believed Mr. Rasch was a liaison and impartial and so appeared at the hearing without representation. On November 22<sup>nd</sup>, only 4 of the 7 members were present. Ms. Williams will testify she submitted a binder, which was submitted again with this appeal, containing pictures of like pre-existing murals in the district and with petitions of over 150 signatures in support of the painted murals and painted signage, and emails and letters from local people and tourists, as far as Europe, supporting the murals. And there are other letters in support which we will pass out tonight, including a letter recently sent to this Council from a long time, downtown eastside resident in support of the murals, pointing to the positive addition to the neighborhood and the murals on the Tune Up Café and Warehouse 21."

Ms. Stravalle-Schmidt continued, "During the hearing, the artists, some of whom will testify before this Council and others, spoke to the economic benefit personally received and for the community uplifting of the neighborhood and the cultural consistency of the murals. Those in opposition also spoke. Mr. Duchelle spoke, stating that Association members were not totally against it, but were concerned about the precedent might be set here. As you can see, precedent had already existed and apparently acceptable to those in opposition are the signage at Cliff's Liquor Store, which we will show you. Ms. Bernstein said she heard Ms. Williams wanted to have more galleries further down the road. There is no evidence to support that contention, and Ms. Williams will so testify. The other party in opposition, Ms. Heldmeyer, was concerned that it would open up for other RAC properties. However, we were not discussing RAC properties and the exception that we're asking for, which is limited within 300 feet, would not run into a slippery slope argument."

Ms. Stravalle-Schmidt continued, "Mr. Euell, former owner of the building, also spoke against murals in that he had put in \$150,000 worth of improvements in the building and felt the classy old lady had turned into a tart. The relevancy of this is questionable and if anything...."

Geno Zamora, City Attorney, said, "Excuse me Madam Chair, members of the Governing Body, you've just been handed an unsworn statement and I'm going to ask that you not review that, because it has not been introduced through public testimony in the sworn manner, and isn't sworn in and of itself."

Ms. Stravalle-Schmidt said, "You mean the letter that was sent. Well, could I ask the Council, apparently, accordingly the letter was actually mailed directly to the Council."

Mr. Zamora said, "Which would be an *ex parte* communication and therefore should not be considered."

Ms. Stravalle-Schmidt said, "The administrative procedure says that people are allowed to send letters and what have you for public hearings to the Council."

Mr. Zamora said, "Through the Land Use Department, correct."

Ms. Stravalle-Schmidt said, "Okay, so it didn't come through the Land Use Department. Well we can correct that. If it comes through the Land Use Department, we would like to add that to the record."

Ms. Stravalle-Schmidt continued, "...and also note this opinion is from the seller who no longer resides in Santa Fe."

Ms. Stravalle-Schmidt continued, "So, you have before you the Findings of Fact from November 22<sup>nd</sup> which set out the reasons for the denial of the exceptions. There was also discussion on December 13<sup>th</sup> of which they were not aware and could not attend. The opposition brief states that the Appellants did not ask for an exception to the sign ordinance at the November 22<sup>nd</sup> hearing. However, in the minutes and Exhibit G, the staff memo states staff recommends the denial of two exceptions, so we believe we did ask for the two exceptions. Also, it is the Appellant's contention that the sign which has Liza Williams on it is not a sign in the term of the statute or definition at 14-12.1, but a work of art. The definition by the courts and nicely stated in 6-1.4(C)(5) is informative. Works of art mean any work of visual art including, but not limited to drawings, paintings, murals and frescos."

Ms. Stravalle-Schmidt continued, "Unlike the signs exempted in the ordinance, works of art/murals are not merely information or commercial speech which does no more than propose a commercial transaction. The expression contained the painted Liza Williams murals and signs extend beyond merely economic interest. Interesting to note that Exhibit G, the staff memo, which the Appellant hadn't seen before, in the opposition brief is dated November 22<sup>nd</sup>, the day of the hearing which did not conclude until well after 7:00 p.m. that evening, at which time the Board voted to deny the exception. It leaves a strong inference that that the denial was a foregone conclusion that the Appellants were not given an opportunity to be heard. Looking at the Finding of Facts in the minutes there is no evidence relied on which gives credence to the inference that the staff memo recommending the denial, was written before the Applicant had the opportunity to be heard."

Ms. Stravalle-Schmidt continued, "If any evidence was relied upon, at best, it was only the opposition opinion and unsubstantiated fears. As you can see, there are not independent reports, studies or objective facts to support the conclusory reasons for the denial of the exception or to show that the murals and painted signage did not promote the Ordinance's purpose. Nor is there any indication in the record that the Board reviewed in any meaningful manner, at the time of the denial, the evidence submitted by the Plaintiffs. Courts hold that a mere invocation of interests is insufficient. The Board must also show how the proposed activity endangers the governmental interests. As you can see by the exhibit, there are

signs that are definitely are not harmonious with the keeping of the Historic District, yet they are allowed. A Board's determination can only be sustained supported by substantiated evidence. On the contrary, the evidence submitted to the Board and here tonight, showed and will show that the 806 art promotes the ordinances purposes and meet the exception."

Ms. Stravalle-Schmidt continued, "Based on the actual record of the minutes, the Board denied the exception as follows: 'Does not damage the character of the neighborhood.' Staff agreed but the Historic Board did not. They claimed they had no information about the dates of the painted murals and signage and whether or not they were approved. Query, why wasn't that research done. The after the fact Findings of Fact and the opposition brief, as I said, disagreed with the staff and has even less reasoning and more conclusory statements. The evidence presented at the hearing showed that murals were indeed there before 806 art and the evidence tonight, and there was why we asked for the exception. And the evidence tonight will show that the murals existed for a decade and were never cited or approved by the Board. Clearly the Appellants met this prong."

Ms. Stravalle-Schmidt continued, "Two. The exception is required to prevent a hardship to the applicant."

Mayor Pro-Tem Wurzbarger asked Ms. Stravalle-Schmidt if she has other people who are testifying.

Ms. Stravalle Schmidt said she does, but "I would like to quickly state..."

Mayor Pro-Tem Wurzbarger asked her to wrap up her summary and then we'll go to the witnesses.

Ms. Stravalle-Schmidt continued, "We believe we met all the exceptions, particularly like the hardship exceptions. We show that we had checks of \$2,500 that we paid that we would have to lose if we paint over it. The fact that red roosters and pink pigs were more sufficient than these very tasteful murals that we're asking for exception only to be on this building. Also, the third prong, which no one knows the meaning of, talk about vague and over-broad, and told that. We believe that if anything else this definitely promotes the harmonious nature of the environment. Also, I won't go through why we believe it's not applicable, but as to the first amendment, we do believe that this is a content issue because of the fact that the motorcycle was asked to be removed and that there is other content out and not content. The distinction being that one is applied strict scrutiny and one is intermediate standard. Basically, what City Council's pointed out is the intermediate standard, which we claim that nonetheless, even if the intermediate standard was applied, which makes the difference between the governmental purposes."

Ms. Stravalle-Schmidt continued, "And I think it's important here is these murals support the purposes of the statute, not the fact that it's brown wall and that what else is allowed actually is not harmonious, is not keeping with the culture or history of Santa Fe, and we're asking for a very limited exception. So, regardless of what standard you apply, whether it's strict scrutiny, which means that obviously the courts find that governmental purposes, such as esthetics and historic preservation are not

compelling. The distinction between the two tests is, in the intermediate standard, those would be substantial purpose, so even if you said they were substantial, they didn't meet the narrowly tailored prong that's necessary, or ample alternatives in the narrow prong is specifically important because when you enforce on a complaint only basis, that leads to unbridled discretion. There should be some kind of, and I understand the City has money problems, but that's not an issue when it affects a person's rights or determinations of what they believe they are able to put or have in their other types of murals."

Mayor Pro-Tem Wurzburger said, "Okay, I'm going to say thank you, and you will have a chance to speak again in your closing statement."

Responding to Mayor Pro-Tem Wurzburger, Ms. Stravalle-Schmidt said she is only going to call witnesses Liza Williams and Mac Diltz for 15 minutes, Cruz Eagleheart for 5 minutes, and Joan LaRocca for 5 minutes.

Mayor Pro-Tem Wurzburger said our process allows 2-3 minutes for witnesses and this hasn't been invented especially for this case. Mayor Pro-Tem Wurzburger gave Ms. Stravalle-Schmidt 3 minutes for each witness.

### **Questioning of Witnesses**

**Liza Williams, MacKenzie Diltz, Cruz Eagleheart and Joan LaRocca were sworn**

#### **Witness Liza Williams**

STRAVALLE-SCHMIDT: Liza, can you please tell the Council why you chose 806 as the place for your gallery.

LIZA WILLIAMS: Okay, I was looking on Canyon Road, and I looked all around Santa Fe. I used to have a gallery on the Plaza, so I knew what business would be like there, but I particularly liked the neighborhood in 806 Old Santa Fe Trail. I loved the building, and I love the murals that were painted next door to me, and I really loved the flavor of it. I knew it was going to end up being a destination gallery. I would have to advertise a lot. I realized that it wouldn't be like being on Canyon Road where you get foot traffic for free. So that's basically why I love that building.

STRAVALLE-SCHMIDT: Would you have purchased the building if you would have known that you would not be able to have the murals on the building.

LIZA WILLIAMS: I don't think so, because part of the reason that I loved the neighborhood is because of the murals that were next door and also down the street.

STRAVALLE-SCHMIDT: Is it true that you paid artists to paint the murals.

LIZA WILLIAMS: There is an evolution of how the murals started. I didn't buy the building with the idea of putting murals on. No, that didn't happen. What did happen is, one of the neighbors, Cruz Eagleheart, he lives next door, came to me and told me that he had 8 years before painted a mural inadvertently on my building. He thought it was Cliff's Liquor Store Building, but it was my building, well the previous owner's. Anyway, the previous owner made him take the painting down and I told him that because I own the building now, if he wanted to put the painting back up, I would like that, so that's how it began. And I didn't plan on having any more than that one mural. But then something very very distressing started happening, and that was one of my artists could not even make their mortgage payments, and they were having a hard time paying bills. And I had a limited amount of money to get my gallery started, and I just decided to put people to work, and I put everybody to work, but I also wanted my artists to have some work.

STRAVALLE-SCHMIDT: Okay, can you please explain to this Council the discussion that I referred to in my presentation of the discussion that you had with the representative agent on the Board, Mr. Rasch.

MAYOR PRO-TEM  
WURZBURGER: Okay, I'm going to allow one more minute for that discussion and that's it. We'll have to go on to someone else.

LIZA WILLIAMS: Mr. Rasch came to my gallery after I got red tagged and acted like my new best friend. And he said he was going to help me with the H-Board and all I would have to do was talk about my passion about my artists. And then I asked him if I should get a lawyer, because I'm not any good at this. And he said, oh no, that would be horrible. The H-Board would deny you. You can't get a lawyer, don't do that. And so, I don't think my story was presented properly, and I noticed when he was at the H-Board, he had his lawyer sitting right next to him. Okay, there is a complete conflict of interest in the system, and I don't [inaudible] and I don't want this to happen to anyone else. Truly, in my view, he should have been a go-between. He should not have been partial."

MAYOR PRO-TEM  
WURZBURGER: Thank you for your testimony.

**Witness Cruz Eagleheart**

MAYOR PRO-TEM

WURZBURGER:

Would you give your name for record, please.

CRUZ EAGLEHEART:

Cruz Eagleheart.

STRAVALLE-SCHMIDT:

Cruz, would you just like to tell the reason you're testifying today.

CRUZ EAGLEHEART:

Well, I was really excited, as well as all my neighbors about replacing the mural, and I've never, ever had a complaint on these murals that I've done, and I just thought it was odd that anybody would even conflict with saying anything about the murals when I got nothing but compliments out of them. I've had them photographed many times, and I just think it's a contribution to the neighborhood, and it's real art.

STRAVALLE-SCHMIDT:

Cruz, how long has your family been in that area.

CRUZ EAGLEHEART:

We've been there longer than the United States was there, my family.

STRAVALLE-SCHMIDT:

Okay, and can you just explain to the Council what happened after the appeal was filed.

CRUZ EAGLEHEART:

Well, I was told, ticketed as well, right away, and was cited and was told either to remove them or I would be under a penalty of \$500 fine and possibly 90 days in jail."

STRAVALLE-SCHMIDT:

And how many days did you have to remove the murals.

CRUZ EAGLEHEART:

He gave me 4 days.

STRAVALLE-SCHMIDT:

And, was that enough time for you to do anything or object to it.

CRUZ EAGLEHEART:

No. I can't afford even to have an attorney or anything like, so I just went ahead and painted over them.

STRAVALLE-SCHMIDT:

Okay. Is there anything else you want to add.

CRUZ EAGLEHEART:

Well, I think it's a travesty that these murals aren't at least finished, and we plan on complying from now on, on anything else that we need to do with the Board as far as signage or anything like that. So, I just want to ask you guys for lenience.

**Joan LaRocca**

JOAN LaROCCA: Hi. I'm Joan LaRocca. I came to Santa Fe in 1988, and I knew I had to live here. It took me a long time to get here. It was the people, it was the air, it was the sky, it was the land, it was the diversity and it was the love for art that this City showed me. All art. And I thought that that was supported and embraced. I'm an art educator and I'm an artist. I moved here 6 years ago, finding my dream. I had a lot of success in Connecticut with galleries and shows and I was amazed, because a lot of what had happened to me when I visited, changed my whole life, in that one time. My vision changed. My painting changed. My spirit changed. And it was sort of a miracle. I came back 6 years ago, bought a house here.

STRAVALLE-SCHMIDT: Please connect this to Liza.

JOAN LaROCCA: Liza. Okay. I went to galleries with my work. They said they didn't show water colors. I went to galleries with my work, and they said they didn't take any work that is circles. I went to have my paintings framed, and in the gallery it was my good fortune to see this lady behind me. And I got my work then, and she looked at it and she said those are really nice. Are they yours. And I said yes they are. She said, do you have a gallery, and I said no, I don't have a gallery. And she said, well I'm opening a gallery and I like your work. She didn't care that they were water colors. She did not care that they were in circles. She took my work. She came to my studio. She took my work to the gallery. When I was there, she said, I'm going to paint murals on the wall, would you like to paint one, and I said yes. She paid me for it. I started painting, I've spent maybe 60 hours on it, and it's only half done.

STRAVALLE-SCHMIDT: And were you paid for that painting.

JOAN LaROCCA: Yes.

STRAVALLE-SCHMIDT: And was that painting helpful.

JOAN LaROCCA: Yes. I've been broke for a long time on the [inaudible]. So, anyway, I was painting the mural outside, and customers came into the gallery and they were very interested in the painting, and I ended up selling them a framed painting of that image. So, I made quite a bit of money in one months, more than I had made the whole year. Liza, I have a lot of

respect for her. She knows art, and she knows good art, and if you visit the gallery, you will see a lot of diversity of art in there, but they all hold together, because they are good and that's the issue."

MAYOR PRO-TEM  
WURZBURGER

Thank you. And this is your last witness. Another rule you may not be familiar with, is that we do applause or cry or whatever until the end, so please hold your applause.

**Witness MacKenzie Diltz**

MackENZIE DILTZ:

My name is MacKenzie Diltz, and I'd just like amplify on a couple of things. Number one, you can see from this poster here, that are numerous murals all over the Downtown Eastside District and all over all the other historic districts in town. Secondly, our appeal for this exception, Mr. Rasch pointed out that there is a streetscape part of your ordinance that extends 300 feet, so if you want to grant this exception, it is only for this 300 feet and doesn't apply to the rest of the Downtown Eastside District, so it's not like you're opening it up to everybody else. You can see that when people come to this town, they see murals all over the place, and not just us, they're everywhere. And right here for you to see that. And when Mr. Rasch came to see us, he said he was our liaison with the H-Board. That sounded well and good. He was going to guide us through the appeal, as has been testified, said to Liza, just tell them your passion. That's what they want to hear. He talked about this 3 criteria to meet for this exception, and he kind of laughed and said nobody knows what this third criteria means, just put down anything. So, that was well and good. And then we come down to the appeal, or to the exception request. Lo and behold, Mr. Rasch is the one that's testifying against us. So that's not right. Your system is not right. If you're going to be liaison, that's fine. Somebody else needs to be up here representing the City. That doesn't work. So appreciate you considering this appeal to get us an exception on these murals.

**Speaking to the Appeal**

*All those speaking were sworn en masse*

Mayor Pro-Tem Wurzbürger gave everyone 2 minutes to speak.



**[inaudible] Singh Khalsa [previously sworn]**. Mr. Khalsa said he wanted to speak about the common welfare and common good that comes together in creating laws like this. He said in every estimation of majority and minority rights, there is always the benefit of the doubt given, that we hope, as a democratic society, we have estimated it correctly. He said many people came together to express a personal opinion that they wanted to express themselves. It wasn't about the regulation. He said he is looking to be noted through this hearing.

**George Robinson, 837 Old Santa Fe Trail [previously sworn]**, said he lives just up the street from Liza's gallery. He when first saw the murals he was filled with elation. It made him feel really good and really happy. He said he noticed the crocuses blooming on the City Hall lawn and the vibrancy, color and life and was glad to see that. He said he enjoys the murals and is right around the corner, and to see them daily, really enhances his life and the neighborhood. He said he heard about the third prong and perhaps this speaks to that which is a mystery. He said such is the power of art – it elated and enhanced his life. He said he is not exactly here to defend Liza, but he likes what she's doing and he is here to speak to the art and how it makes him feel as one of the neighborhood. He said there are many like him in the neighborhood, and he is here to say it is good art, it makes him happy, "and I want it to stay. Please, let it stay."

**Maurene Handy [previously sworn]**, said she has lived here for 25 years, commenting she has been an artist all her life, never made a living at it, but won't stop, and agrees with the last speaker. She said we all love art. When she came to Santa Fe she loved the historic, beautiful buildings, which we all love. She thanked the Old Santa Fe Association, its board and all the organizations of the world that preserve the history. She said there is another side to Santa Fe, which is a living art side of Santa Fe that is just as important as all the old buildings, and through history, mural paintings and old buildings have hand in hand. She said these are seen together in the most ancient cultures on the planet. She asked, "In your heart of hearts, does it not make you slightly uncomfortable to ask an artist to obliterate their work. What harm is there in granting an exception to this. And I have to say, not wanting to insult anybody, if you look at the rag tag nature of Old Santa Fe Trail from Liza's gallery down to the capitol, please. And she sits at the crossroads of going to the museums in either direction. It's a very vibrant, kind of unusual area, and so for the residential neighborhood to be having a few complaints, I think does not justify painting out art that is free to the viewing of everybody that drives by there. I think most people probably enjoy it. Thank you."

**Pen LaFarge [previously sworn]**, said his father was one of the original architects of the Historic District Ordinance. He lives just down the street, at 647 Old Santa Fe Trail, from this gallery and has lived there all of his life. He is the Past President of the Historic Neighborhood Association, the first in the City, and borders on this building. He doesn't think this is about art, and hopes there is no one in the room that doesn't love art. He said we are really here to talk about is advertising and murals and following the Ordinance. He said, "If advertising and murals, billboards, posters, etc., are allowed indiscriminately,

despite the Ordinance, then what one has is a patchwork of Ordinance and non-Ordinance throughout the City, which is a problem. There is no doubt about that. And, if the Ordinance is not right, if the Ordinance is the wrong Ordinance, then it should be changed. But if the Ordinance is as it is as written, it should be followed, and asking for a special exception would be the way to about a mural of this sort, although I would not necessarily approve of it, personally, where it is. As I argued last time for you to uphold the Historic Design Review Board, this time I would like to argue for you to uphold your ordinances, and Santa Fe's ordinances. The people need to know what they can count on. One of the problems Santa Fe has had for years is that, in fact, it often doesn't follow its own ordinances. This could be a dangerous precedent. Thank you for listening."

**Rick Martine, 725 Mesilla Road, [previously sworn]**, said he doesn't live in the Historic District, but he understands the art, neighborhoods. He said his problem is that is he has to get a permit if he puts in new windows, and people just have to follow the rules, and this person didn't go through the process. He said the whole idea is to protect and preserve the neighborhoods as they are, and not putting in things that don't belong there. In this case, what happened is they didn't follow process. He said the Council is here to be sure people follow process.

**Dena Aquilina [previously sworn]**, said she lives a few blocks down from this property. She moved into the neighborhood right out of college, and she feels it is a privilege to live in a historic district, and along with that privilege and blessing is the and responsibility of property owners to learn the laws before making changes to their property. She said she has been on the Board of the Historic Neighborhood Association since the 1980's and served as President for several years. She attended hundreds of H-Board meetings over the years, and she has always been impressed with the citizens that give of their time to serve on that Board and how thoughtful they are in their deliberations. She said she always reminds people, nit-pickers, that Santa Fe that could look like Phoenix if we didn't have the H-Board upholding the esthetics of our neighborhood and Santa Fe. This is the reason people come to Santa Fe. She urged the Council to uphold the Board's thoughtful decision in this matter. She said this reminds her of the phrase that "It's easier to get forgiveness than it is to get permission, and I hope that you don't go that way. Thank you very much."

**Marilyn Bane, 622 ½ B, [previously sworn]**, said she is a past President of the Old Santa Fe Association, and she is speaking on behalf of the Association this evening. Ms. Bane said, "We ask you, most sincerely, to please deny this appeal. I'm going to read a little bit here in the interest of getting through this quickly. Laws governing the historic districts are put into effect decades ago to protect the historic integrity of Santa Fe. The Williams Gallery have violated those laws, and in this appeal, she insists that she has the right to do so. Art certainly does, as Miss Williams contents contribute to bringing tourists to Santa Fe, but every research report for the State or the City over the last 20 years that analyzes why people want to come to Santa Fe, shows that Santa Fe's natural beauty and our City's historic integrity are the two most important reasons they want to come here. That is in no way to deny the very important role

art plays in our reputation and in our economy. It's not only important, it is critical. But it is also critical that we ensure a level playing field in the galleries and businesses in the historic districts. That means obeying the laws as others do."

Ms. Bane continued, "If you vote to uphold this appeal, every business, not just art galleries, but every business in the historic districts from downtown to the Railyard to Canyon Road would be able to cite this as precedence in putting up more and bigger and more unique signage to advertise their wares. Picture the Plaza with neon signs, or Canyon Road with galleries competing as to who could paint the biggest ads on the sides of earth tone buildings. Even Realtors could conceivably paint on their walls pictures of the houses they represent in order to attract customers. I think that's a little far fetched, but nonetheless, a point that needs to be made."

Mayor Pro-Tem Wurzbarger said Ms. Bane's time has expired and asked her to wrap up her presentation.

Ms. Bane continued, "I will. The City has noise ordinances, speeding ordinances and in the historic districts, among other things, we have very specific sign ordinances. We also have a process that allows for reasonable exceptions to the ordinance. The HDRB found that the exceptions Ms. Williams requested were not reasonable. I applaud Ms. Williams empathy for her artists and her desire to help them out in their economic need, but let's be clear, these murals are advertising. They are painted by her artists, advertising their art for sale in her gallery. They were painted for her purposes only, and she has said, as enticements to enter the gallery. Ms. Williams has said that friends, clients and tourists will come to Santa Fe specifically to see her gallery, in large part, because of these murals. Well, this brings to mind, and you may remember this, a few years ago, the owner of a very upscale and popular restaurant on Canyon Road, in defending why he should be allowed his illegal renovations to a historic building, stated that, 'Geronimo's is the destination. It just happens to be in Santa Fe.' "

Mayor Pro-Tem Wurzbarger asked Ms. Bane to wrap up her presentation quickly.

Ms. Bane continued, "Okay. I wish, in summary, that Ms. Williams would demonstrate more respect for the City whose world wide art reputation allows her the opportunity to capitalize on her location in Santa Fe and profit from her profession. I ask you to exert wisdom in this and up hold our lies and deny this appeal."

**Bill Duchelle, 501 E. Coronado, a neighbor of the Liza Williams Gallery, [previously sworn],** said he is President of the Old Santa Fe Trail Neighborhood Association, and a builder, which does lots of restoration work as well as new buildings. He said he has several letters which were sent to him, which he would like to read, but he can't do that in a 3 minute time period. He will make his time as short as possible and stay within the time as much as possible. He congratulated the new Councilors and welcomed back the old Councilors.

Mayor Pro-Tem Wurzbarger said, given the lateness of the hour, Mr. Duchelle should summarize the letters which can be put into the file.

Geno Zamora, City Attorney, said, "Unfortunately, they are unsworn statements from persons, just like the previous letters. Sorry about that."

Mr. Duchelle said, "Then the letters cannot be read."

Mayor Pro-Tem Wurzbarger said, "They cannot be read or submitted."

Mr. Duchelle asked to look at the map which was presented earlier before proceeding, and Mayor Pro-Tem Wurzbarger said he needs to proceed because this is part of his time.

Mr. Duchelle said, "I am representing the Association and the majority who have spoken to this. We as a Neighborhood Association are in the DeVargas Covenants, and our covenants in themselves, require that we uphold the character of the neighborhood and the individuals on our board have spoken to this, and these requests to put art or put paintings as signage on buildings, is not within our covenant. This is not an issue of art to us, it is simply a legal issue. The standards of the Historic Review Board have been compromised, actually the sign ordinance has been compromised. I went and met with Liza Williams before the last hearing. I introduced myself, just as I have this evening, and I bring this up in defense of David Rasch. I cannot imagine that David led her to believe she did not need representation. I also was accused, after the last hearing out in the hall with a number of people around of having misrepresented myself. I gave a full disclosure as to who I was, and suggested she speak with David Rasch. I also suggested that she took that advice in not going to the City and getting approval, as is required of all of us. May I look at this please, and comment."

Mayor Pro-Tem Wurzbarger advised Mr. Duchelle that his time has expired, and he can make "one comment, please."

Mr. Duchelle said, "The signage represented here and the artwork, is over a number of districts. Some of it is graffiti, different rules apply to the different districts, so it truly isn't representative of the Old Santa Fe Trail Neighborhood Association and it is not representative of the area that she's in."

**Bernard Euell [previously sworn]**, said, "I am an international fine art appraiser with 40 years of experience. I'm an art fraud expert, a expert court witness, a university law professor and a writer. That's not really why I'm here. In fact, I'm here, contrary to some of my own interests. At three o'clock yesterday afternoon, I flew out of central Mexico to be here. I canceled a planned trip to Troncones on the Coast, but I was in Mexico for a month examining murals, writing and lecturing. The negatives for me are, I am the former owner of the building. I am the one that put the \$150,000 into making it a *grande dame* of the neighborhood, and I do still believe that it has now been turned into a tart. But, if this gallery fails, I as the mortgage owner am going to have a problem, and I'm going to have to find a new buyer. Nonetheless, I'm

here to testify. I support artists and galleries; I have for 40 years. But following the Historic Design Review Board hearing, at which I testified, I was subjected to shouting across the street all the way to my car from the Appellant, and I have since been the subject of an obscene gesture by one of the artists sitting behind me who has spoken here tonight. Nonetheless, I am here to speak on behalf of the Ordinance. In the article in which Liza Williams expressed her opinions, in *Santa Fe Monthly*, she said, 'We need to preserve what is really import here.' She's right, I agree with that. She went on to say, 'This is an art tourism City,' but what she didn't say is, it also is a historic City. I have just been to San Miguel de Allende, Juan Oaxaco and Queretaro, where they recognize this and have very strong ordinances, so there are no signs visible from the street. That's why we Americans go down and spend our money there.

Mr. Euell continued, "One final point, because I will certainly observe the point that you also want to get home. Prior to selling the building to Liza Williams, I did tell her that her idea of writing her name across the front probably was going to be a problem. After she bought it, I told her that the murals she was probably going to paint would be a problem. I know several other people who also told her she couldn't do that. And a final point is that I feel very sorry for the artists who have been led into this illegal activity. I really do feel sorry for them. But I hope you will uphold the ordinance, otherwise, it won't have the force of law in the future."

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

Councilor Bushee said it is purported that the mural by Mr. Eagleheart was asked to be removed. She asked, "Was it asked to be removed because of the content, or because it was put up illegally. "

Mr. Euell said he didn't ask him to remove it. He said they discussed it, it was photographed and in the newspaper, and "I said, I want to talk to the neighborhood and see how the neighborhood feels about it. Before that he voluntarily painted it over because he didn't like the controversy. I never asked him to do so, and I would not have done so."

Councilor Bushee asked if it was a commissioned mural.

Mr. Euell said it was on the building when he purchased it.

Councilor Bushee asked, "Originally, Mr. Bearheart, was that mural commissioned or did anybody... I know it's been removed."

Mr. Bearheart said, "The prior owner owned that mural, prior to him. And he was all gung ho for the murals I put on there, and he also was gung ho to sell her the property with those murals there. So his contradiction here is absurd."

Councilor Bushee said she was just trying to get at how the murals were in place, and then, why removed – did the former owner have permission.

Mr. Bearheart said, 'The prior owner of the property to him, realized that was her wall. So, Cliff's, they cited Cliff's to take it off. Well, they didn't cite them, they just asked them, so we took it down. That was before he was even on the property.'

Councilor Bushee said, "And it was because it was without permission. That's why it was removed."

Mr. Bearheart said, "Well we thought it was with permission, because it was Cliff's that gave us the wall, and it was their assumption as well. Cliff's Liquor's gave us the permission."

Councilor Dominguez said, "I guess a question for David Rasch. What it sounds like is that it's not that murals are not allowed, it's just that they have to go through a process so that there is due process, not only for the appropriate committees, but the public as well. So, murals are allowed in the District."

Mr. Rasch said, "Murals are allowed in certain circumstances, and the standards differ by District."

Councilor Dominguez said, "And that's why we have the process."

Mr. Rasch said, "Yes, and they're certainly different outside the Historic Districts, some you've seen photographs of. But also, the important thing is, almost any standard in the Historic District, the applicants can request an exception to that standard. And so really, it's the response to the exception criteria, where I don't even know where I'm going to go when I go to a site visit, whether someone violated the law or not, I don't know if I'll recommend approval or denial until I see the exception criteria. That's where I make my recommendation."

Councilor Dominguez said, "So Kelley. This is really a reaction to the fact that there was not a proper procedure that was followed to get these particular murals established or put up."

Ms. Brennan said, "If you're asking, when you say this, you mean the Notice of Violation and the follow-up process."

Councilor Dominguez said he is.

Ms. Brennan said, "Yes."

Councilor Rivera asked how many murals we are talking about today.

Mr. Diltz said there are 5 murals, noting there were 6, but one has been painted over. He demonstrated the murals with photographs from the packet using the overhead projector, noting there were 2 signs in addition to the murals.

Mr. Rivera asked, "Did you ever think there might be a process to go through."

Ms. Williams said, "I asked around the neighborhood, and I asked other people who had murals and they said no, just paint them."

Councilor Ives asked Ms. Williams when she purchased the property.

Ms. Williams said July 15, 2011.

Councilor Ives asked when the first mural was painted.

Ms. Williams said, "I think Cruz came and told me about his mural that he had 8 years before, and I think that was in August, and probably when he started. Just last summer."

Councilor Ives asked Ms. Williams when she invited the other artists that she wanted to support financially to come and paint their mural.

Ms. Williams said, "It was after that. Maybe the whole month of August."

Councilor Trujillo asked, "So, David answer me this question. If tomorrow they were to go out there, paint everything over, apply for a permit to repaint them, what do you think the likelihood of them getting allowed to repaint those again."

Mr. Rasch said, "If they're not under portals, the H-Board would have to grant an exception."

Councilor Trujillo said, then they would have to go to the H-Board again and Mr. Rasch said yes.

Councilor Bushee asked if the same applies for painting the name of the gallery across the front.

Mr. Rasch said yes. Signage cannot be painted on walls, and there are other standards for business signage.

Councilor Bushee asked, "When you purchased this, you understood you were in the Historic District."

Ms. Williams said, "Yes. Everybody said non-contributing building, whatever that means, so I didn't think..."

Councilor Bushee asked Ms. Williams, when she purchased the building, if she was seeking any renovations to the building, and Ms. Williams said no.

Councilor Bushee asked, "And so, nobody informed you, when you bought the building about what that meant to be in a Historic District."

Ms. Williams said, "No, not really."

Councilor Bushee said, "No, not really, as in a Realtor or the person you bought it from, or nobody?"

Ms. Williams said, "Well, I was told it was non-contributing and it wasn't as important as if it was contributing. I now know differently, believe me."

Councilor Dominguez said, "David, I guess I want to follow up on Councilor Trujillo's question about whether or not... just to be clear, what you're saying is that the Historic Design Review Board would not accept these exceptions, because that's what is in front of us, is an exception, but they may support or approve other murals if they were in compliance with some sort of character. And the reason I ask this question, is because I guess, personally speaking, some of those murals I like, and some I don't. And I think, having gone through the process, some of that might have been vetted a little more or better. I just want to know, if there is an application tomorrow, assuming this gets denied, and they do go through the process, it's not they will be denied the opportunity, just some of these particular opportunities."

Mr. Rasch said, "There are standards for how murals can be placed in public view on buildings in Historic District. And that is either under a portal, and this building has a portal, or in something akin to a nicho, an inset panel with a roof. Those are two locations in this District where murals can be approved by the H-Board. Out of those, the Applicant has to meet the exception criteria successfully in order to get that exception."

Mayor Pro-Tem asked Mr. Rasch to remind the Council of the criteria.

Mr. Rasch said, "Yes, and the Appellant mentioned two sets of exceptions. There are 3 questions or 6 questions. The 3 questions are specifically for design criteria exceptions murals and signage. But because the 6 questions have more criteria, I offer that to Applicants because it gives them more opportunities to argue their case. So I said, 'Choose either one.' I love the 6 questions because they are more specific to the property, but legally, the 3 are the ones that are required for design. Those are the 3 that they asked for: 1) Does not damage the character of the District; 2) Are needed in order to prevent a hardship; and 3) Are needed in order to allow residents to continue living in the Historic District. And #2 is the most important one here. Because there are other standards for allowing murals and signage, I did not think, and the Board did not think, they met that criteria. You have to meet all criteria in order to get an exception."

Councilor Dominguez said, "So essentially, if they meet this criteria, if they come in for another application and they meet this criteria, it could be approved."

Mr. Rasch said, "Correct."



Councilor Ives said, in follow-up to a question asked by Councilor Rivera and again to Ms. Williams, "You said that you understood that the building, as a structure, was non-contributing within the Historic District. Is that correct."

Ms. Williams said yes.

Councilor Ives said, "And your understanding was that that was not as important as if it was contributing."

Ms. Williams said that is what she was told, yes.

Councilor Ives asked Ms. Williams how long she has been in Santa Fe.

Ms. Williams said, "I moved here in 1990, and then I left in 1998, and then I came back in July."

Councilor Ives said, "Then presumably you've had that understanding for some time, would that be correct."

Ms. Williams said, "No, not really. No. I've never owned a building downtown before."

Councilor Ives said he understood Ms. Williams to say she had space on the Plaza.

Ms. Williams said she rented a space there, commenting that someone said she owned it, which she didn't.

Councilor Ives asked Ms. Williams when she rented the space on the Plaza, and Ms. Williams said 1997-2000.

Councilor Ives asked, "And had you looked at that question of contributory and non-contributory structures prior to buying the building."

Ms. Williams said, "It really didn't matter to me. I just loved the building, so I didn't research that."

Councilor Ives said, "Okay, but you understood the distinction before you bought the building."

Ms. Williams said, "I read about it, and from the Realtor and all of that. What does it mean. What's the difference. I would like to know."

Mayor Pro-Tem Wurzbarger asked Mr. Rasch to answer that question.

Mr. Rasch said, "In the Historic Districts there are four types of buildings, and I'll start at the top and work down. Significant, most important, at least 50 years older, little or no alteration. Contributing, at

least 50 years old, minimal alteration, but still retains historic integrity. Non-contributing, less than 50 years old, or if it is 50 years old or older, it has been so altered it has lost its historic integrity. And then, non-status, meaning we haven't gotten around to giving them status yet. It could be any of the above, but the essential question is this building is non-contributing legally. It's actually eligible for upgrade to contributing, but that's not the issue at hand, as the standards do apply to all buildings."

Councilor Bushee said she doesn't see 6 criteria. On page 8, it says the Appellants did not meet the exception criteria and there are only 3 listed.

Mr. Rasch said, "Yes, they chose to do the 3, and those are actually the 3 that are applicable for design criteria."

Councilor Bushee said, "But you said they had to meet all 6 criteria."

Mr. Rasch said, "They could choose to."

Councilor Bushee said, "From here forward, if they wanted to apply murals or art to their building, where are the 6 criteria. At what page."

Mr. Rasch said, "In the Ordinance, they're on the next page, but they're not in this packet."

Councilor Bushee said, "You said they needed to meet all 6 criteria, or just 3."

Mr. Rasch said, "I often give an applicant the ability to choose 3 or 6. I prefer the 6, because #4 and #5 are wonderful criteria."

Councilor Bushee said, "Okay, back to the litmus test. You said if they want to put it on their portal, they need to get none. They just need to get a special exception."

Mr. Rasch said, "If they want to put murals under their portal, that is approved by Code. It would just go to the H-Board without an exception request."

Councilor Bushee said it's funny that's the one area they chose to leave blank. She said, "What's difficult for us, I see that the signage does not meet... I see that needs to change. But we see these side murals, like Arlene LaDell Hayes on the side. Very tasteful, fits in, on the outside wall. So if they were to come back... I guess my question really would be and you know, I'm not trying to split hairs, but if they were not required to remove that one particular one for instance, and went to try and apply for a special exception at this juncture, would it qualify."

Mr. Rasch said he might have to defer to legal, since this case is already being heard as an appeal, he doesn't believe they can go back to the Board for the same case.

Councilor Bushee said, "If the Council said go back and get a special exception, or something on those lines. Again, I don't want to get into art censorship or anything like that. And I do think the signage is a problem. I think that would be clear for most people, but I'm asking. What's also hard for us to tell is exactly where some of these are. You can see the one that's in the parking and you can see the one that got painted over and you can see the one on the outside wall being painted, but you can't really see where on the building this is from the view we've got of the building."

Ms. Brennan said, "In your packets, there is a map that has numbers. It is on page 33, and they're black and white copies. After that, the numbers show where those works of art appear on the building."

Mayor Pro-Tem Wurzbarger asked, "Can you simply clarify that none of these are under the portal, which according to the testimony from staff is that is the only legal place where one can have them. Is that correct. Whether these are on there now, or hope to be in the future, so we're not leading them down the rosy path."

Ms. Brennan said, "There are two places where they can have murals or artwork without an exception. Under the portals, or the other one is something like a nicho, called a church derived-design."

Councilor Wurzbarger said, "I cannot read this and neither can Councilor Bushee, may we presume that none of the murals which are under consideration tonight with this appeal, meet either of those two criteria."

Ms. Brennan said, "Mayor Pro-Tem, you are correct."

Councilor Bushee said, "Let me just clarify. Your little sketch here of the building has 9 locations."

Ms. Brennan said, "The sketch was actually prepared by the appellant, there were 6 murals and 3 signs, one sign was painted over and one mural was painted over. And I believe I identify those in my Memo."

Councilor Bushee asked, "If one were to request that they go back before the H-Board, let's just say we pick, 1, 2, 3, I don't care. If we were to do that what would the procedure be."

Ms. Brennan said, "I believe the Historic Design Review Board has actually reviewed these specific murals and signs with the exception criteria and voted on them, and none of them met them. I would also say, I believe there is a requirement that you can't go back for a year, but I'm not quite clear on it."

Councilor Ives asked, in terms of the criteria, if all 3 criteria must be met for an exception to be granted, and Ms. Brennan said this is correct.

### **Appellant's Closing Statement**

Mayor Pro-Tem Wurzbarger gave Ms. Stravalle-Schmidt 5 minutes for her closing statement.

Ms. Stravalle-Schmitt Attorney said, "We believe we did meet all the exceptions. The issue here, if you look at the record, we believe they did not look at the evidence, particularly #2 which is an issue that the exception is required to prevent a hardship to the Applicant or injury to the public welfare. Eliza Williams spent \$2,500, that's an economic injury that wasn't even looked at. Anyone here who is a lawyer, understands the conclusory statements are insufficient to support reasons. It has to be based on the evidence. And the evidence you see that is in the package, none of it seemed to refer to the pre-existing murals. All the testimony heard was precedent, precedent, precedent. That's the problem. I agree with Counsel that ignorance of the law is no excuse, but also for anyone who is an attorney who understands the fine points of this, there is a very specific distinction, particularly when it's based on the actions or inactions of the Board which lead people to rely on it. And one is, yes, as the City points out, it is true, ignorance of the law is no excuse. However, laws must give persons of average intelligence a reasonable opportunity to understand the law and provide specific guidelines on how to apply them, and further here, it was a representative of the very body that enforces these law who advised the appellants for retaining the attorney. He could have even assisted them in understanding the law."

Ms. Stravalle-Schmidt said, "Also, the existence of pre-existing murals was enough to lead a reasonable person.... and that's one of the reasons we asked for the exception. This wasn't just to be, well we don't care about the rules, and that's why we went for the exceptions. She went alone. If you look at the evidence we present, we meet the three criteria, and we're asking for this Board to grant the exceptions, because I want to show you what is allowed in the District. If you can show me the Cliff's Liquor signs, and also the pink four foot rooster and the 8 foot, excuse me, it's the 8 foot multi-colored rooster, and 4 foot pink pig, that she's allowed to put in her area, but not the murals. I would rather have the murals rather than the pink pig and rooster as acceptable in the Historic District. So definitely, the murals are far more harmonious than the, although they're nice, the pig and the rooster."

Ms. Stravalle Schmidt said, "Finally, I want to say that we're willing to waive our First Amendment arguments, our due process arguments, if this Board were to grant our exceptions specifically for the 300 feet. We're not complaining about any of the other murals, because also, that's another Constitutional issue. You cannot enforce laws by complaint only. That leads to content based issues. Also, finally, I just want to raise the issue of equitable estoppel and finalize that. And that is basically, the City's inaction on the other murals next door and in the historic districts, and the Board's statement through its agents to Ms. Williams, give rise to a claim of equitable estoppel and also, it's enforcement by complaint only. These actions are unfair, and further compounded by the Staff Memo dated November 22<sup>nd</sup>, and this is something that really is pretty unfair, and basically unequal, and therefore, they should be equitably estopped from not giving her an exception when there are other pre-existing murals. None of them are under portals. They are all similar in size, color and style. So, this Council has the right, through equity and fairness, to grant

an exception and limit it to just the 300 feet. And I really have to say it's interesting that these other murals exist, but everyone's talking about precedent. They're already there. That's one of the reasons she thought it was okay. That's why they think they met as the first prong."

Councilor Bushee said she has the Cliff's Liquor sign that's painted on the wall, but it says removed.

Mr. Rasch said it was removed.

Councilor Bushee asked when those were removed.

Mr. Rasch said because of the Liza Williams complaints about the adjacent signage and murals, those property owners were cited, and both chose the route to remove the murals and not to go to the H-Board for exceptions. They no longer are extant and were removed by choice.

Mayor Pro-Tem Wurzbarger asked Mr. Zamora for guidance, if there can be a response by the Appellant.

Mr. Zamora said, "The question is this, at this "rolling moment in time," Councilors are asking clarification questions. It is up to the Councilors as to whom they ask the question of."

Councilor Trujillo asked how long had the Cliff's liquor sign been up before it was taken down.

Mr. Rasch said, "That's a very good question, because Legal showed me that in the 1980's when the sign ordinance was amended, it made a standard such that any materials that exist must become compliant to the current Code. So even those signs were there a very long time in the 1980's, they were required to come down."

Responding to Councilor Trujillo, Mr. Rasch said the sign has been in violation since the 1980's

Ms. Brennan said, "I understood we didn't know when they were painted, but we couldn't tell whether they were grandfathered or not, but we did have some evidence that they were not."

Councilor Trujillo said then there is a possibility that could have been grandfathered, and they took them down, and Ms. Brennan said yes.

Councilor Bushee said one of her favorite buildings on Baca is the old Sena Garage, but it's not in an historic district. She said, "I like that people used to paint on the buildings, and I actually really like this Cliff's Liquors... that was there, and I like the mural that was there for a long time. You not only, you know, went beyond the ordinance you kind of overdid it in a way. You chose to not even go near the portal which is the exception you would have been allowed. And some of these murals I think fit in nicely and are very discreet, and really blend in. I hate to see good art go away, and I don't want to see a sanitized area, but

you are in a Historic District, and this is a real quandary, and I'm really stuck, I have to say. Because I hear the neighbors when they said we want to be able to regulate and we do have ordinances to that effect, and I don't really buy the exceptions, the argument on hardship necessarily, and somewhere at the beginning you wanted us to buy the building for \$800,000. I really didn't buy that, at all. I like that it's not just all brown buildings. And I have to say, some of the buildings we have approved on Old Santa Fe Trail, even though they met the Code, are some of the worst additions to the neighborhood. We've got some really bad Territorial style buildings on Old Santa Fe Trail, in particular, and they meet the letter of the law, but they're not a good addition from my perspective, and art is in the eye of the beholder. And all of the signage, I can really see why that should go away and you should comply with appropriate signage, but I'm having a little trouble giving up some of the murals, myself."

**MOTION:** Councilor Rivera moved, seconded by Councilor Dimas, to deny the application of Liza Williams for exceptions to permit the painting of signs and murals on a non-contributing building and a yard wall at 806 Old Santa Fe Trail and to uphold the decision of the Historic Design Review Board in Case H-11-31.

**CLARIFICATION THAT THE MOTION INCLUDES ADOPTION OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THIS CASE.** Ms. Brennan said, "As a point of order, would the motion include the Council's adoption of the Findings of Fact and Conclusions of Law." Mayor Pro-Tem Wurzburger asked the Maker and Second, and they said it does.

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

**For:** Councilor Bushee, Councilor Calvert, Councilor Dimas, Councilor Dominguez, Councilor Ives, Councilor Rivera, Councilor Trujillo and Councilor Wurzburger.

**Against:**

**Explaining his vote:** Councilor Trujillo said, "Ms. Williams, I wish you had been in District 4, because I think it would have been beautiful if it had stayed there, but because of what we've gone through, I'm going to vote yes with you Chris."

**Explaining her vote:** Councilor Bushee said, "You know, I have to uphold the H-Board's decision. Yes."

7. **CASE #2011-136. JOHN MUIR AMENDMENT TO RAILYARD MASTER PLAN. FRANK COPPLER, APPLICANT, REQUESTS AN AMENDMENT TO THE RAILYARD MASTER PLAN TO DEVELOP SURFACE PARKING ON LEASE LOT L, THE JOHN MUIR BUILDING. THE PROPERTY IS IN THE RAILYARD REDEVELOPMENT SUBDISTRICT OF THE BCD (BUSINESS CAPITOL DISTRICT) AND LOCATED IN THE NORTH RAILYARD OFF ALCALDESA STREET, BETWEEN GROSS KELLY WAREHOUSE AND THE TRAIN TRACKS. (WILLIAM LAMBOY) (Postponed to March 28, 2012 City Council Meeting)**

This item is postponed to the Council meeting of March 28, 2012.

**I. ADJOURN**

The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 10:50 p.m.

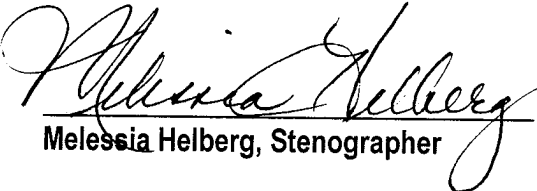
**Approved by:**

\_\_\_\_\_  
**Mayor David Coss**

**ATTESTED TO:**

\_\_\_\_\_  
**Yolanda Y. Vigil, City Clerk**

**Respectfully submitted:**

  
**Melessia Helberg, Stenographer**