



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MAY 9, 2007  
CITY COUNCIL CHAMBERS

## AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 5/4/07 TIME 3:25 pm

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

RECEIVED BY *Fydominguez*

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. INVOCATION
4. ROLL CALL
5. APPROVAL OF AGENDA
6. APPROVAL OF CONSENT CALENDAR
7. APPROVAL OF MINUTES: Reg. City Council Meeting – April 25, 2007
8. PRESENTATIONS
  - a) Employees of the Month for May 2007 – Patricia Hodapp, Division Director and Susie Sonflieth, Director of Branches; Community Services/Library. (5 Minutes)
  - b) 2007 Water Conservation Poster Contest Presentation. (Rachel Wexler) (5 Minutes)
  - c) Proclamation – “Las Jardineras Garden Club Day”. (5 Minutes)
  - d) Proclamation – “Bike to Work Week”. (Becky Lo Dolce) (5 Minutes)
9. CONSENT CALENDAR
  - a) Bid No. 07/51/B – Twenty Eight (28) Indoor Cycling Bikes for GCCC; Nautilus GSA. (Lisa Gulotta)
    - 1) Request for Approval of Budget Increase – GCCC Equipment Reserve.
  - b) Request for Approval of Amendment No. 1 to Lease Agreement to Permit Serving and Consumption of Alcoholic Beverages on Leased Patio at 113 Washington Avenue; Inn of the Anasazi. (Jack Hiatt)
  - c) Request for Approval of Lease Agreement – Use of Burro Alley to Place a Self-Contained Book Stall; Collected Works Bookstore. (Jack Hiatt)



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- d) Request for Approval of Procurement Under Cooperative Price Agreement – Two (2) Fire Engines for Fire Department; First In, Inc. (Chief Chris Rivera)
- e) Request for Approval of Procurement Under State Price Agreement – Eight (8) Cardiac Monitors for Fire Department; Bound Tree Medical Corporation. (Chief Chris Rivera)
- f) Request for Approval of Santa Fe Farmers' Market Institute Economic Development Application to Receive Grants From State of New Mexico for the Purpose of Constructing and Owning a Farmers' Market Building. (Craig Fiels)
  - 1) Request for Approval of Amendment No. 1 to Professional Services Agreement – Design and Construction of New Facility; Santa Fe Farmers' Market Institute. (Frank Romero)
- g) Request for Approval of Amendment No. 1 to Legal Services Agreement – Ferguson Water Well; Montgomery & Andrews, P.A. (Maureen Reed)
- h) Request for Approval of FY 2007/2008 Funding Recommendations for Children and Youth Commission Contracts. (33 Contracts) (Lynn Hathaway)
- i) Request for Approval of Lease Agreement and Professional Services Agreement – La Comunidad de Los Ninos Head Start Program; Presbyterian Medical Services. (Lynn Hathaway)
- j) Request for Approval of Amendment No. 2 to Professional Services Agreement – Promotional Testing of Police Personnel; Donnoe & Associates, Inc. (Chief Eric Johnson)
- k) Request for Approval of Project Agreement – Pedestrian Safety Law Enforcement Operation; New Mexico Department of Transportation, Traffic Safety Bureau. (Chief Eric Johnson)
  - 1) Request for Approval of Budget Increase – General Fund Police Overtime.



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- l) Request for Approval of Procurement Under State Price Agreement – Paved Street Rehabilitation Program – Slurry Seal Treatment; IPR, Ltd. (Robert Romero)
  - 1) Request for Approval of Procurement Under State Price Agreement – 2007 Pavement Resurfacing Program; Cutler Paving, Inc. and Espanola Mercantile Company.
- m) Request for Approval of Emergency Procurement Under Federal Price Agreement – Vacuum Rider Sweeper for Parks Division; Nilfisk-Advance, Inc. (Robert Romero)
- n) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_. (Councilor Heldmeyer, Councilor Calvert, Councilor Wurzburger and Councilor Bushee)  
A Resolution Establishing a Recognition Program for Youth who Contribute to City Programs Through Their Volunteer Efforts. (Rick Anaya)
- o) Request for Approval of Sole Source Procurement for Amendment No. 3 to Professional Services Agreement – Engineering Services; Joe Barela. (Jack Hiatt)
- p) Request for Approval of Budget Increase for Final Payment for City's Contribution to New Mexico Retiree Health Care Authority. (Kathryn Raveling)
- q) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_. (Councilor Dominguez, Councilor Wurzburger and Councilor Calvert)  
A Resolution in Support of the Cerrillos Road Reconstruction Project Through Governor Richardson's Investment Partnership 2 (GRIP2) Enacted During the 2007 Special Session of the New Mexico Legislature, and Committing to the Local Match Requirement. (Eric Martinez)
- r) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_. (Councilor Dominguez, Councilor Wurzburger and Councilor Calvert)  
A Resolution in Support of the Siler Road Extension Project Through Governor Richardson's Investment Partnership 2 (GRIP2) Enacted During the 2007 Special Session of the New Mexico Legislature, and Committing to the Local March Requirement. (Eric Martinez)



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- s) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_. (Councilor Wurzburger and Councilor Bushee)  
A Resolution Directing Staff to Collaborate with the Santa Fe Railyard Community Corporation to Resolve Issues in the Land Lease that Impact Current and Future Residential Sales. (Ron Pacheco)
- t) Request for Approval of Vacation of Right-of-Way and Declaration of Easements – Public Ingress, Egress and Utility Easement at Railyard Property. (Frank Romero)
- u) Request for Approval of Amendment No. 10 to Professional Services Agreement – North Railyard Infrastructure Project Improvements; Santa Fe Railyard Community Corporation. (Frank Romero)
- v) Request for Approval of Amendment No. 1 to Professional Services Agreement – Railyard Park and Plaza; The Trust for Public Land. (Frank Romero)
- w) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_.  
Request for Approval of Quarterly Budget Adjustments for Quarter Ending March 31, 2007. (Kathryn Raveling)
- x) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_. (Councilor Bushee, Mayor Coss, Councilor Wurzburger, Councilor Trujillo, Councilor Dominguez and Councilor Calvert)  
A Resolution Designating \$1 Million of the City's 2008 Capital Improvements Program (CIP) Bond for a City Owned Building on the City Owned Railyard Property to be Occupied by Warehouse 21. (Robert Romero)
- y) Request for Approval of New Street Names for Railyard Property. (Frank Romero)
- z) Request for Approval of Settlement Agreement and Release Regarding City's Water System Between the City of Santa Fe, Public Service Company of New Mexico and Avistar, Inc. (Jim Montman and Maureen Reed)



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MAY 9, 2007  
CITY COUNCIL CHAMBERS

- aa) Request for Approval to File Declaratory Lawsuit to Collect Under Lone Mountain Contracting, Inc.'s \$640,000 Construction Bond for Renovation of City's "Hospital" Water Tank that Continues to Leak after Lone Mountain's Repair. (Gary P. Martinez and Maureen Reed)
- bb) Request for Approval of Reorganization Plan for City of Santa Fe. (Galen Buller)
- 10. Request for Approval of the Santa Fe Regional Emergency Communications Center Joint Powers Agreement between the City and County of Santa Fe. (Becky Martinez)
- 11. Request for Approval of the Santa Fe Regional Emergency Communications Center FY 2007/08 Budget. (Becky Martinez)
- 12. MATTERS FROM THE CITY MANAGER
- 13. MATTERS FROM THE CITY ATTORNEY

## EXECUTIVE SESSION:

- 1) Discussion on Land Swap with New Mexico Department of Transportation, Pursuant to §10-15-1 (H) (8) NMSA 1978.
- 2) Discussion of Real Property and Water Rights Pursuant to §10-15-1 (H) (8) NMSA 1978.
- 14. Action Regarding Land Swap with New Mexico Department of Transportation. (Robert Romero)
- 15. Action Regarding Real Property and Water Rights. (Kyle Harwood)
- 16. MATTERS FROM THE CITY CLERK
- 17. COMMUNICATIONS FROM THE GOVERNING BODY

## **EVENING SESSION – 7:00 P.M.**

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE



# Agenda

REGULAR MEETING OF  
THE GOVERNING BODY  
MAY 9, 2007  
CITY COUNCIL CHAMBERS

- C. INVOCATION
- D. ROLL CALL
- E. PETITIONS FROM THE FLOOR
- F. APPOINTMENTS
- G. PUBLIC HEARINGS:
  - 1) Request from Palo Alto, Inc, for a Restaurant (Beer & Wine) License to be located at Pizza Hut #12958, 4250 Cerrillos Road. (Yolanda Y. Vigil) **(Postponed at the April, 25, 2007 City Council Meeting)**
  - 2) Request from SWIG, LLC, for a Transfer of Ownership of Dispenser License #2748 from Hallund, LLC to SWIG, LLC. The License Will Remain at SWIG, 135 West Palace Avenue, Suite 300. (Yolanda Y. Vigil)
  - 3) CONSIDERATION OF RESOLUTION NO. 2007-\_\_\_\_\_.  
**Case #M 2005-44. 1034 & 1038 Old Taos Highway General Plan Amendment.** Derrick Archuleta, Agent for SAFE Properties, LLC/Kevin McKown Requests General Plan Amendment from "Residential – Very Low Density" to "Residential – Medium Density" for ± 2.179 Acres at 1034 and 1038 Old Taos Highway. The Property is Zoned R-2. (Greg Smith) **(Postponed at January 31, 2007 City Council Meeting)**
  - 4) CONSIDERATION OF BILL NO. 2007-20: ADOPTION OF ORDINANCE NO. 2007-\_\_\_\_\_.  
**Case #ZA 2005-20. 1034 & 1038 Old Taos Highway Rezoning.** Derrick Archuleta, Agent for SAFE Properties, LLC/Kevin McKown Requests Rezoning from R-2 (Residential, 2 Dwelling Units Per Acre) to RM-10 (Multifamily Residential – 10 Dwelling Units Per Acre) for ± 2.179 Acres as 1034 and 1038 Old Taos Highway. (Greg Smith) **(Postponed at January 31, 2007 City Council Meeting)**
  - 5) **Case # H-06-18A and Case # H-06-18B.** Appeal of Historic Design Review Board's Decision Concerning Property at 1323 ½ Cerro Gordo Road. Randall Bell, Agent for Catherine Ann Murdy, Owner, Requests that the Governing Body Rescind the Action on August 22, 2006 to Reduce the Height of a Fence from 11' to 6' on a Non-Contributing Property in the Downtown & Eastside Historic District. (David Rasch)



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- 6) CONSIDERATION OF BILL NO. 2007-15: ADOPTION OF ORDINANCE NO. 2007-\_\_\_\_\_. (Councilor Ortiz, Mayor Coss, Councilor Heldmeyer, Councilor Bushee Councilor Calvert and Councilor Wurzburger)  
An Ordinance Amending Sections 14-4.3(E)(1)(C) and 14-4.3(E)(3)(6)(IV) SFCC 1987 to Define Major and Minor Projects in the Railyard Redevelopment Subdistrict. (Frank Romero)

## H. 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.

\*Translator for the hearing impaired available through the City Clerk's Office upon 5 days notice.

CITY COUNCIL MEETING  
EXECUTIVE SESSION  
May 9, 2007

The governing body of the City of Santa Fe met in an executive session duly called on May 9, 2007 beginning at 6:35 p.m.

**The following items were discussed:**

**1) Land Swap with New Mexico Department of Transportation, Pursuant to §10-15-1(H)(8).**

PRESENT

Mayor Coss  
Councilor Bushee  
Councilor Calvert  
Councilor Chavez  
Councilor Dominguez  
Councilor Heldmeyer  
Councilor Ortiz  
Councilor Trujillo  
Councilor Wurzbarger

STAFF PRESENT

Galen Buller, City Manager  
Frank Katz, City Attorney  
Yolanda Y. Vigil, City Clerk  
Robert Romero, Public Works Director  
Kyle Harwood, Assistant City Attorney

**2) Real Property and Water Rights Pursuant to §10-15-1(H)(8) NMSA 1978.**

PRESENT

Mayor Coss  
Councilor Bushee  
Councilor Calvert  
Councilor Chavez  
Councilor Dominguez  
Councilor Heldmeyer  
Councilor Ortiz  
Councilor Trujillo  
Councilor Wurzbarger



STAFF PRESENT

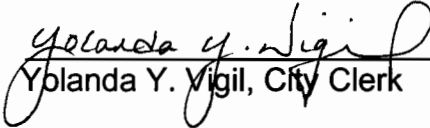
Galen Buller, City Manager

Frank Katz, City Attorney

Yolanda Y. Vigil, City Clerk

Kyle Harwood, Assistant City Attorney

There being no further business to discuss, the executive session adjourned at 7:00 p.m.

  
Yolanda Y. Vigil, City Clerk

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SANTA FE CITY COUNCIL MEETING  
May 9, 2007

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<u>AFTERNOON SESSION - 5:00 p.m.</u>		
ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved [amended]	1
APPROVAL OF CONSENT CALENDAR	Approved [amended]	1
CONSENT CALENDAR LISTING		2-4
APPROVAL OF MINUTES: Reg. City Council Meeting – April 25, 2007	Approved	4
PRESENTATIONS		
EMPLOYEES OF THE MONTH FOR MAY 2007 – PATRICIA HODAPP, DIVISION DIRECTOR AND SUSIE SONFLIETH, DIRECTOR OF BRANCHES; COMMUNITY SERVICES/LIBRARY DIVISION		4-5
2007 WATER CONSERVATION POSTER CONTEST PRESENTATION		5
PROCLAMATION – “LAS JARDINERAS GARDEN CLUB DAY.”		5
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<u>CONSENT CALENDAR DISCUSSION</u>		
REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – PAVED STREET REHABILITATION PROGRAM – SLURRY SEAL TREATMENT; IPR, LTD. REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – 2007 PAVEMENT RESURFACING PROGRAM; CUTLER PAVING, INC., AND ESPANOLA MERCANTILE COMPANY	Approved	6

<b><u>ITEM</u></b>	<b><u>ACTION</u></b>	<b><u>PAGE #</u></b>
CONSIDERATION OF RESOLUTION NO. 2007- 39 A RESOLUTION IN SUPPORT OF THE CERRILLOS ROAD RECONSTRUCTION PROJECT THROUGH GOVERNOR RICHARDSON'S INVESTMENT PARTNERSHIP 2 (GRIP2), ENACTED DURING THE 2007 SPECIAL SESSION OF THE NEW MEXICO LEGISLATURE, AND COMMITTING TO THE LOCAL MATCH REQUIREMENT	Approved [amended]	6-9
CONSIDERATION OF RESOLUTION NO. 2007- 40 A RESOLUTION IN SUPPORT OF THE SILER ROAD EXTENSION PROJECT THROUGH GOVERNOR RICHARDSON'S INVESTMENT PARTNERSHIP 2 (GRIP 2), ENACTED DURING THE 2007 SPECIAL SESSION OF THE NEW MEXICO LEGISLATURE, AND COMMITTING TO THE LOCAL MATCH REQUIREMENT	Approved [amended]	9-10
CONSIDERATION OF RESOLUTION NO. 2007-41. REQUEST FOR APPROVAL OF QUARTERLY BUDGET ADJUSTMENTS FOR QUARTER ENDING MARCH 31, 2007.	Approved	10
REQUEST FOR APPROVAL OF THE SANTA FE REGIONAL EMERGENCY COMMUNICATIONS CENTER JOINT POWERS AGREEMENT BETWEEN THE CITY AND COUNTY OF SANTA FE	Approved	10-12
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MATTERS FROM THE CITY MANAGER	None	14
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MOTION TO COME OUT OF EXECUTIVE SESSION	Approved	14-15
ACTION REGARDING LAND SWAP WITH NEW MEXICO DEPARTMENT OF TRANSPORTATION	Approved	15
ACTION REGARDING REAL PROPERTY AND WATER RIGHTS	Approved	15

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
MATTERS FROM THE CITY CLERK	None	15
<u>EVENING SESSION</u>		
ROLL CALL	Quorum	
PETITIONS FROM THE FLOOR	Information	16-17
APPOINTMENTS		
Extraterritorial Zoning Authority	Approved	17
Sustainable Santa Fe Commission	Approved	17-18
Public Safety Committee	Approved	18
400 <sup>th</sup> Anniversary Committee	Approved	18
PUBLIC HEARINGS		
REQUEST FROM PALO ALTO, INC., FOR A RESTAURANT (BEER & WINE) LICENSE TO BE LOCATED AT PIZZA HUT #12958, 4250 CERRILLOS ROAD	Approved	18-19
REQUEST FROM SWIG, LLC, FOR TRANSFER OF OWNERSHIP OF DISPENSE LICENSE #2748 FROM HALLUND, LLC to SWIG, LLC. THE LICENSE WILL REMAIN AT SWIG, 135 WEST PALACE AVENUE, SUITE 300	Approved	19-20
CONSIDERATION OF RESOLUTION NO. 2007- 42 <u>CASE #M2005-44</u> . 1034 & 1038 OLD TAOS HIGHWAY GENERAL PLAN AMENDMENT, DERRICK ARCHULETA, AGENT FOR SAFE PROPERTIES, LLC/KEVIN MCKOWN, REQUESTS GENERAL PLAN AMENDMENT FROM "RESIDENTIAL – VERY LOW DENSITY" TO "RESIDENTIAL – MEDIUM DENSITY" FOR ± 2.179 ACRES AT 1034 AND 1038 OLD TAOS HIGHWAY	Approved [amended]	20- <del>46</del> 51
CONSIDERATION OF BILL NO. 2007-20; ADOPTION OF ORDINANCE NO. 2007-13. 1034 & 1038 OLD TAOS HIGHWAY GENERAL PLAN AMENDMENT. DERRICK ARCHULETA, AGENT FOR SAFE PROPERTIES, LLC/KEVIN MCKOWN, REQUESTS REZONING FROM R-2 (RESIDENTIAL, 2 DWELLING UNITS PER ACRE) TO RM-10 (MULTIFAMILY RESIDENTIAL – 10 DWELLING UNITS PER ACRE) FOR ± 2.179 ACRES AT 1034 and 1038 OLD TAOS HWY	Approved [amended]	46-51

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE #</u>
<b>CASE #H-06-18A AND CASE #H-06-18B. APPEAL OF HISTORIC DESIGN REVIEW BOARD'S DECISION CONCERNING PROPERTY AT 1323 ½ CERRO GORDO ROAD. RANDALL BELL, AGENT FOR CATHERINE ANN MURDY, OWNER, REQUESTS THAT THE GOVERNING BODY RESCIND THE ACTION ON AUGUST 22, 2006 TO REDUCE THE HEIGHT OF A FENCE FROM 11' TO 6' ON A NON-CONTRIBUTING PROPERTY IN THE DOWNTOWN &amp; EASTSIDE HISTORIC DISTRICT</b>	<b>Appeal Denied</b>	<b>51-67</b>
<b>CONSIDERATION OF BILL NO. 2007-15; ADOPTION OF ORDINANCE NO. 2007- 1. AN ORDINANCE AMENDING SECTIONS 14-4.3(E)(1)(C) AND 14-4.3(E)(3)(6)(IV) SFCC 1987, TO DEFINE MAJOR AND MINOR PROJECTS IN THE RAILYARD REDEVELOPMENT SUBDISTRICTS</b>	<b>Adopted</b>	<b>67</b>
<b>COMMUNICATIONS FROM THE GOVERNING BODY</b>	<b>Information/Discussion</b>	<b>67-71</b>
<b>ADJOURN</b>		<b>71</b>

**MINUTES OF THE  
REGULAR MEETING OF THE  
GOVERNING BODY  
Santa Fe, New Mexico  
May 9, 2007**

**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 May 9, 2007, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance and Invocation, roll call indicated the presence of a quorum, as follows:

**Members Present**

Mayor David Coss  
Councilor Miguel Chavez, Mayor Pro-Tem  
Councilor Patti J. Bushee  
Councilor Christopher Calvert  
Councilor Carmichael A. Dominguez  
Councilor Karen Heldmeyer  
Councilor Matthew E. Ortiz  
Councilor Ronald S. Trujillo  
Councilor Rebecca Wurzbarger

**5. APPROVAL OF AGENDA**

Mr. Buller said Item #9(BB) on the Consent Calendar was put on the agenda thinking there might be a decision at Public Works, and Public Works postponed that item and asked that it be removed from the agenda.

**Councilor Bushee moved, seconded by Councilor Calvert, to approve the agenda as amended. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzbarger voting for the motion and none against.**

**6. APPROVAL OF CONSENT CALENDAR**

**Councilor Calvert moved, seconded by Councilor Dominguez, to approve the following Consent Calendar, as amended. The motion was approved on the following Roll Call vote:**

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

**Against: None.**

- a) **BID NO. 07/51/B – TWENTY EIGHT (28) INDOOR CYCLING BIKES FOR GCCC; NAUTILUS GSA. (LISA GULOTTA)**
  - 1) **REQUEST FOR APPROVAL OF BUDGET ADJUSTMENT – GCCC EQUIPMENT RESERVE.**
- b) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO LEASE AGREEMENT TO PERMIT SERVING AND CONSUMPTION OF ALCOHOLIC BEVERAGES ON LEASED PATIO AT 113 WASHINGTON AVENUE; INN OF THE ANASAZI. (JACK HIATT)**
- c) **REQUEST FOR APPROVAL OF LEASE AGREEMENT – USE OF BURRO ALLEY TO PLACE A SELF-CONTAINED BOOK STALL; COLLECTED WORKS BOOKSTORE. (JACK HIATT)**
- d) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER COOPERATIVE PRICE AGREEMENT – TWO (2) FIRE ENGINES FOR FIRE DEPARTMENT; FIRST IN, INC. (CHIEF CHRIS RIVERA)**
- e) **REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – EIGHT (8) CARDIAC MONITORS FOR FIRE DEPARTMENT; BOUND TREE MEDICAL CORPORATION. (CHIEF CHRIS RIVERA)**
- f) **REQUEST FOR APPROVAL OF SANTA FE FARMERS' MARKET INSTITUTE ECONOMIC DEVELOPMENT APPLICATION TO RECEIVE GRANTS FROM STATE OF NEW MEXICO FOR THE PURPOSE OF CONSTRUCTING AND OWNING A FARMERS' MARKET BUILDING. (CRAIG FIELDS)**
  - 1) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – DESIGN AND CONSTRUCTION OF NEW FACILITY; SANTA FE FARMERS' MARKET INSTITUTE. (FRANK ROMERO)**
- g) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO LEGAL SERVICES AGREEMENT – FERGUSON WATER WELL; MONTGOMERY & ANDREWS, P.A. (MAUREEN REED)**
- h) **REQUEST FOR APPROVAL OF FY 2007/2008 FUNDING RECOMMENDATIONS FOR CHILDREN AND YOUTH COMMISSION CONTRACTS (33 CONTRACTS). (LYNN HATHAWAY)**
- i) **REQUEST FOR APPROVAL OF LEASE AGREEMENT AND PROFESSIONAL SERVICES AGREEMENT – LA COMUNIDAD DE LOS NINOS HEAD START PROGRAM; PRESBYTERIAN MEDICAL SERVICES. (LYNN HATHAWAY)**
- j) **REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO PROFESSIONAL SERVICES AGREEMENT – PROMOTIONAL TESTING OF POLICE PERSONNEL; DONNOE & ASSOCIATES, INC. (CHIEF ERIC JOHNSON)**

- k) **REQUEST FOR APPROVAL OF PROJECT AGREEMENT – PEDESTRIAN SAFETY LAW ENFORCEMENT OPERATION; NEW MEXICO DEPARTMENT OF TRANSPORTATION, TRAFFIC SAFETY BUREAU. (CHIEF ERIC JOHNSON)**
  - 1) **REQUEST FOR APPROVAL OF BUDGET INCREASE – GENERAL FUND POLICE OVERTIME.**
- l) ***[Removed for discussion by Councilor Bushee]***
- m) **REQUEST FOR APPROVAL OF EMERGENCY PROCUREMENT UNDER FEDERAL PRICE AGREEMENT – VACUUM RIDER SWEEPER FOR PARKS DIVISION; NILFISK-ADVANCE, INC. (ROBERT ROMERO)**
- n) **CONSIDERATION OF RESOLUTION NO. 2007- 36 (COUNCILOR HELDMEYER, COUNCILOR CALVERT, COUNCILOR WURZBURGER AND COUNCILOR BUSHEE). A RESOLUTION ESTABLISHING A RECOGNITION PROGRAM FOR YOUTH WHO CONTRIBUTE TO CITY PROGRAMS THROUGH THEIR VOLUNTEER EFFORTS. (RICK ANAYA)**
- o) **REQUEST FOR APPROVAL OF SOLE SOURCE PROCUREMENT FOR AMENDMENT NO. 3 TO PROFESSIONAL SERVICES AGREEMENT – ENGINEERING SERVICES; JOE BARELA. (JACK HIATT)**
- p) **REQUEST FOR APPROVAL OF BUDGET INCREASE FOR FINAL PAYMENT FOR CITY'S CONTRIBUTION TO NEW MEXICO RETIREE HEALTH CARE AUTHORITY. (KATHRYN RAVELING)**
- q) ***[Removed for discussion by Councilor Heldmeyer]***
- r) ***[Removed for discussion by Councilor Heldmeyer]***
- s) **CONSIDERATION OF RESOLUTION NO. 2007- 37 (COUNCILOR WURZBURGER AND COUNCILOR BUSHEE). A RESOLUTION DIRECTING STAFF TO COLLABORATE WITH THE SANTA FE RAILYARD COMMUNITY CORPORATION TO RESOLVE ISSUES IN THE LAND LEASE THAT IMPACT CURRENT AND FUTURE RESIDENTIAL SALES. (RON PACHECO)**
- t) **REQUEST FOR APPROVAL OF VACATION OF RIGHT-OF-WAY AND DECLARATION OF EASEMENTS – PUBLIC INGRESS, EGRESS AND UTILITY EASEMENT AT RAILYARD PROPERTY. (FRANK ROMERO)**
- u) **REQUEST FOR APPROVAL OF AMENDMENT NO. 10 TO PROFESSIONAL SERVICES AGREEMENT – NORTH RAILYARD INFRASTRUCTURE PROJECT IMPROVEMENTS; SANTA FE RAILYARD COMMUNITY CORPORATION. (FRANK ROMERO)**



- v) **REQUEST FOR APPROVAL OF AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT – RAILYARD PARK AND PLAZA; THE TRUST FOR PUBLIC LAND. (FRANK ROMERO)**
- w) ***[Removed for discussion by Councilor Wurzburger]***
- x) **CONSIDERATION OF RESOLUTION NO. 2007- 38 (COUNCILOR BUSHEE, MAYOR COSS, COUNCILOR WURZBURGER, COUNCILOR TRUJILLO, COUNCILOR DOMINGUEZ AND COUNCILOR CALVERT). A RESOLUTION DESIGNATING \$1 MILLION OF THE CITY'S 2008 CAPITAL IMPROVEMENTS PROGRAM (CIP) BOND FOR A CITY OWNED BUILDING ON THE CITY OWNED RAILYARD PROPERTY TO BE OCCUPIED BY WAREHOUSE 21. (ROBERT ROMERO)**
- y) **REQUEST FOR APPROVAL OF NEW STREET NAMES FOR RAILYARD PROPERTY. (FRANK ROMERO)**
- z) **REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT AND RELEASE REGARDING CITY'S WATER SYSTEM BETWEEN THE CITY OF SANTA FE, PUBLIC SERVICE COMPANY OF NEW MEXICO AND AVISTAR, INC. (JIM MONTMAN AND MAUREEN REED)**
- aa) **REQUEST FOR APPROVAL TO FILE DECLARATORY LAWSUIT TO COLLECT UNDER LONE MOUNTAIN CONTRACTING, INC.'S \$640,000 CONSTRUCTION BOND FOR RENOVATION OF CITY'S "HOSPITAL" WATER TANK THAT CONTINUES TO LEAK AFTER LONE MOUNTAIN'S REPAIR. (GARY P. MARTINEZ AND MAUREEN REED)**
- bb) **REQUEST FOR APPROVAL OF REORGANIZATION PLAN FOR CITY OF SANTA FE. (GALEN BULLER) *[This item was removed from the Consent Calendar at the request of the City Manager]***

**7. APPROVAL OF MINUTES: Reg. City Council Meeting – April 25, 2007**

**Councilor Calvert moved, seconded by Councilor Ortiz, to approve the minutes of the Regular City Council Meeting of April 25, 2007, as presented. The motion was approved on a voice vote, with Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Heldmeyer, Councilor Ortiz, Councilor Trujillo and Councilor Wurzburger voting for the motion and none against.**

**8. PRESENTATIONS**

- a) **EMPLOYEES OF THE MONTH FOR MAY 2007 – PATRICIA HODAPP, DIVISION DIRECTOR AND SUSIE SONFLIETH, DIRECTOR OF BRANCHES; COMMUNITY SERVICES/LIBRARY DIVISION.**

Mayor Coss noted that Ms. Hodapp is in attendance, but Ms. Sonfleith is on vacation. Mayor Coss read the statement into the record honoring them. Mayor Coss presented Ms. Hodapp with a plaque and a check for \$100 from the Employee Benefit Committee.

Ms. Hodapp thanked the Mayor and her staff for helping her get the award. She also thanked the volunteers who raised more than a million dollars for the library. She said the \$100 will be donated to the library to purchase new books.

**b) 2007 WATER CONSERVATION POSTER CONTEST PRESENTATION.  
(RACHEL WEXLER)**

Ms. Wexler presented the winners of the Fourth Annual Water Conservation Poster Contest, noting more than 300 entries were received. The winning posters are displayed in the hallway, and the first and second place winners will be in the calendar.

Ms. Wexler thanked all of the people who helped with the contest including teachers and parents and all the students. She then introduced all of the contest winners, and presented them with a trophy and a prize.

Councilor Bushee said this was one of the hardest contests for her to judge because there were so many great entries. She congratulated all of the young artists who submitted entries.

**c) PROCLAMATION – “LAS JARDINERAS GARDEN CLUB DAY.”**

Mayor Coss introduced Barbara Briggs from the Garden Club. Ms. Briggs, on behalf of the Garden Club, presented information about the Garden Club and thanked the Mayor for the proclamation.

Mayor Coss read the proclamation into the record proclaiming May 18, 2007, as Las Jardineras Garden Club Day in Santa Fe.

**d) PROCLAMATION – “BIKE TO WORK WEEK.” (BECKY LO DOLCE)**

Becky Lo Dolce said next week is Bike to Work Week. She spoke about what is being done to educate bicyclists and motorists, including PSAs on 4-5 radio stations. She introduced Lynn Pickard who commutes from Tesuque daily.

Ms. Pickard asked that the Council do more to educate the public and make bicycling safe for everyone. She said with gas prices so high, it is up to the City to lead the way with alternative transportation. She thanked the Mayor for their efforts in making Santa Fe a premier place to bicycle.

Mayor Coss then read the proclamation into the record declaring May 14-18, 2007, as Bike to Work Week in Santa Fe.

## **CONSENT CALENDAR DISCUSSION**

- 9(l) REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – PAVED STREET REHABILITATION PROGRAM – SLURRY SEAL TREATMENT; IPR, LTD. (ROBERT ROMERO)**
- 1) REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – 2007 PAVEMENT RESURFACING PROGRAM; CUTLER PAVING, INC., AND ESPANOLA MERCANTILE COMPANY**

Councilor Chavez said Mr. McQuarie asked him to ensure that this does meet ADA requirements.

Mr. Romero said the list of projects are on page 13 of the packet, most of which are in the downtown area. He said in accordance with the agreement with DOJ, all of the curb ramps will be brought up to current ADA standards, and most of the streets on this list do meet those standards. The contract is going out soon to do the curb ramps for all the paving we did last year, and any which aren't already done will be in this contract. He said the businesses in the area have asked him to complete this before July 1<sup>st</sup> and the big summer season. He has spoken with both contractors, and it is hoped to get all of this done before July 1<sup>st</sup>. He has provided this list to Joe Lujan, and anything which doesn't meet current ADA standards will be done this summer as well.

Councilor Chavez asked Mr. Romero to please share that information with Dave Mcquarie, Chair of the Mayor's Committee, and to keep him involved through the process.

Councilor Calvert said Española Mercantile is a subsidiary of Mr. Cook, who is a low bidder because he does it on the backs of some of our smaller local communities, and we need to consider this in the procurement process.

**Councilor Chavez moved, seconded by Councilor Heldmeyer, to approve this request. The motion was approved on the following roll call vote:**

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

**Against: None.**

- 9(q) CONSIDERATION OF RESOLUTION NO. 2007- 39 (COUNCILOR DOMINGUEZ, COUNCILOR WURZBURGER AND COUNCILOR CALVERT). A RESOLUTION IN SUPPORT OF THE CERRILLOS ROAD RECONSTRUCTION PROJECT THROUGH GOVERNOR RICHARDSON'S INVESTMENT PARTNERSHIP 2 (GRIP2), ENACTED DURING THE 2007 SPECIAL SESSION OF THE NEW MEXICO LEGISLATURE, AND COMMITTING TO THE LOCAL MATCH REQUIREMENT. (ERIC MARTINEZ)**

Councilor Heldmeyer said there was discussion about meeting the match with in-kind

services, rather than with funds. She asked, with regard to the construction of the road, will we be required to have a 45% local government match on this road.

Mr. Romero said yes. The Legislature passed legislation that local governments had to commit to the projects by May 15, 2007. The match is high, and for the Cerrillos Road project it is a 45-55, but we can use in-kind services, as well as money previously budgeted. He said it is hoped that, if the City does the construction management, we actually can use the cost of vehicles, salaries, benefits. He said he believes it would come to 15% of the construction cost. He said the design is 95% complete on Cerrillos, noting design is usually about 10% of construction cost. That could get us to 25%, meaning we would only have to match at 10%. He said he will need to work to get this approved, but initial conversations with the Governor's office indicate all of these things are eligible.

Mr. Romero said the FIR states that the entire match needs to be \$3.5 million, but there are various in-kind services we can use to get to that match. He will be bringing back the actual DOT agreement, and at that time, we will know exactly what we will commit. He is estimating the match will be \$1-2 million for this project.

Councilor Heldmeyer asked if this is for a tiny portion of Cerrillos Road.

Mr. Romero said the design for Cerrillos Road to St. Michaels Drive is about 95% complete. We haven't gone to property owners recently because we were not sure it would be funded. He said we need to talk to property owners to let them know what we will and will not close. He believes these funds will get to a little past Camino Cielo. He said it is a smaller chunk, noting the last project was about 1.5 miles which took almost 1½ years. That project was too long and impacted too many businesses for too long. It is hoped this stretch can be done in 6-9 months, and get in and out quickly.

Responding to Councilor Heldmeyer, Mr. Romero said, in the state's transportation improvement plan for 2010, there is another chunk of about the same amount. This is State money, not federal, and the last phase was built with a lot of federal money. He said he is working to reduce the burden on CIP.

Councilor Heldmeyer is very concerned about the commitment of our CIP funds, and we will get to 2008 and all the funds will be committed. Tonight we have already awarded \$1 million to Warehouse 21, because it had special circumstances. However, in this case there are more degrees of freedom.

**Councilor Heldmeyer moved, seconded by Councilor Chavez for purposes of discussion, to adopt Resolution 2007-39 with everything except Item #5 on page 3, and when the money comes through, we will determine how to meet the match.**

**Discussion:** Councilor Heldmeyer said #5 provides, "The City of Santa Fe commits that the local matching fund requirement will be satisfied through a combination of in-kind services and cash to become available in the City's 2008 CIP bond issue."

Mr. Romero said, however, this is what the DOT wants. DOT is asking the City to adopt a resolution saying we will support the project and will come up with the match, although we're not committing to a number.

Councilor Heldmeyer doesn't mind committing to a match, she minds committing the 2008 CIP budget to it.

Councilor Bushee said we need to change the resolution on page 10 as well.

Councilor Wurzbarger asked if we are required to identify the source of the money.

Mr. Romero said no.

Councilor Wurzbarger said it might make more sense to leave the item in, but simply remove the source of the funding.

Mr. Romero said that would be more effective, noting the State is asking for our commitment for a match, but doesn't require us to identify the source.

**Friendly amendment:** Mayor Coss suggested putting a "period" after "satisfied" on line two. **The amendment was friendly to the maker and there were no Councilors objecting to the friendly amendment.**

**Discussion:** Councilor Chavez said he saw a small distinction between the two projects. One is the Cerrillos Road project and the other is the Siler Road project, but both are regional projects.

Mr. Romero said both projects are on the Transportation Improvement Plan which was submitted to the State by the RPA, so these two projects are major projects.

Councilor Chavez expressed a concern about the numbers in the local match on the two projects. He also has a concern about the impact of this on the CIP bond cycle. He said the process has gotten ahead of us, and we are going to spread ourselves a little thin if we go very much further.

Councilor Bushee asked Mr. Romero if he believes this is the only source of funds for this project.

Mr. Romero said for the Cerrillos Road project, he can't think of another source, unless we tap into reallocation or funding for a project which isn't going to happen. He said we usually go to the DOT for funding for these kinds of projects. The Legislators came up with these new match amounts. He said, depending on the project, some were a 65/35 match. He said Siler Road is 65/35, while Cerrillos is 55/45. He can try to identify other sources. He said DOT helped fund the design through federal funds and if we do our own construction management, he feels it will be between \$1-2 million, depending on what they will accept as match. He said that agreement will come back to the Council for final approval.

Councilor Trujillo asked if this project would be eligible for severance tax funds.

Mr. Romero said the MAP stuff has already been submitted. It is "first come, first served," and if we wait too long, other cities will get ahead of us.

Councilor Trujillo asked if this project will start in 2-3 years.

Mr. Romero said no. He hopes to bid it out toward the end of the year, and complete it by Fall 2008.

Councilor Trujillo asked the amount of the current allocation.

Mr. Romero said it is \$8.714 million, and they will supply \$4.714 for construction, and we need to match 45% which is about \$3.8 million.

Councilor Calvert said he wants to clarify that this amendment won't jeopardize our place in line, or would generate follow up questions which would delay our application.

Mr. Romero said no, as long as we state that we will meet the match, they don't need to know the source of the money.

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

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

**Against: None.**

**9(r) CONSIDERATION OF RESOLUTION NO. 2007- 40 (COUNCILOR DOMINGUEZ, COUNCILOR WURZBURGER AND COUNCILOR CALVERT). A RESOLUTION IN SUPPORT OF THE SILER ROAD EXTENSION PROJECT THROUGH GOVERNOR RICHARDSON'S INVESTMENT PARTNERSHIP 2 (GRIP 2), ENACTED DURING THE 2007 SPECIAL SESSION OF THE NEW MEXICO LEGISLATURE, AND COMMITTING TO THE LOCAL MATCH REQUIREMENT. (ERIC MARTINEZ)**

**Councilor Heldmeyer moved, seconded by Councilor Chavez, to adopt Resolution No. 2007-40, with an amendment on page 3, line 10, Item C, to put a "period" after "available."**

**Discussion:** Councilor Bushee said a lot of folks think the traffic from this project is going to dump on Alameda. There is concern that the Siler Road crossing will become a problem. She wants to be sure there is a public education effort.

Mr. Romero said there have been several public meetings, the last one within the last two weeks. He said since this is a joint project with the County, it will be the responsibility of the County to maintain. Based on the last meeting, he requested that we take what was discussed at the last public meeting to the Transportation Policy Board and get them to concur with the alignment, with the typical section, right of way, so staff will have clear direction from a board composed of City Councilors and County Commissioners on how to move forward. We want to make sure we don't waste any time in design, right-of-way acquisition, or right-of-way mapping.

Councilor Bushee said she has attended two neighborhood meetings around road issues and the river which weren't related to Siler. However, the big concern was that Siler would dump unnecessary traffic. She thinks there needs to be some education of the public to clarify that it would be the opposite.

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

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

**Against: None.**

**9(w) CONSIDERATION OF RESOLUTION NO. 2007- 41. REQUEST FOR APPROVAL OF QUARTERLY BUDGET ADJUSTMENTS FOR QUARTER ENDING MARCH 31, 2007.**

Councilor Wurzburger asked, on page 5, regarding the item with respect to use of the Lodger's Tax Fund for the 400<sup>th</sup> Anniversary, if we spent \$100,000 for the planning.

Ms. Raveling said there has been only one \$50,000 allocation, and none of the funds have been spent. It was intended as start-up money. However, she will double-check to see if any funds have been spent.

**Councilor Wurzburger moved, seconded by Councilor Chavez, to adopt Resolution No. 2007-41.**

**Discussion:** Councilor Chavez said the \$50,000 was seed money, and no funds have been spent. There is not a concrete plan yet but committees are meeting and work is being done.

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

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

**Against: None.**

**Absent: Councilor Bushee.**

**10. REQUEST FOR APPROVAL OF THE SANTA FE REGIONAL EMERGENCY COMMUNICATIONS CENTER JOINT POWERS AGREEMENT BETWEEN THE CITY AND COUNTY OF SANTA FE. (BECKY MARTINEZ)**

Becky Martinez presented information regarding this matter, noting it is now before the

City for approval and then will go to County on the 29<sup>th</sup>. With this action, Santa Fe County will become the fiscal agent on July 1, 2007, and all employees will become county employees. The County will become responsible for all of the funding for the RECC with the exception of capital which defined in the JPA that it has to be \$5,000 per item.

Councilor Chavez said he has a concern about access to documents stored at the Regional Communications Center, and asked if this is addressed in this document.

Ms. Martinez said she has not seen that in this document. She said the RECC has all of the records, tape recordings of all incoming calls. She said, "Even though this amended Joint Powers Agreement says that the County will become our fiscal agent, we will continue to serve the City and the County."

Chief Johnson said he believes all of the issues have been resolved. Currently, if there are public information requests for any records from the PD side, they send us a notice and we will approve that if we can release those records.

Councilor Chavez asked the Chief if feels the issue of access to records and information has been addressed and there is a good working arrangement. Chief Johnson said yes.

Councilor Heldmeyer asked what kinds of capital expenditures are anticipated.

Ms. Martinez said there is no capital equipment in the 2007/2008 budget. Last year, vehicles were purchased. Any 911 equipment, or mapping or phones are covered by the DFA grants. Last year, the battery backup system blew up, and it was necessary to make an emergency purchase of \$50,000, but that was in the contingency fund.

Councilor Heldmeyer said she was informed that the County is going to relocate some its County offices to the RECC building. She asked, if the building is expanded, is that considered a capital expenditure, and if it is expanded, is there a way to differentiate expansion for the RECC versus expansion for the County offices.

Ms. Martinez doesn't see that would be an expenditure for the RECC. If there was an expenditure for the RECC which benefitted the RECC, they would have to look at that. However, they would go through the RECC board, The City Council and the County Commission for that approval.

Councilor Heldmeyer said the person who told her was fairly certain this expansion would happen within the next year, and asked Ms. Martinez if she has heard about this.

Ms. Martinez said she has not.

Councilor Calvert asked who determines if capital expenditures are needed.

Ms. Martinez said currently, she takes her budget to the RECC Board, and they approve or deny, and then it would have to come to the City Council and the County Commission. It would start with either the Director or her.



*[STENOGRAPHER'S NOTE: Motion for approval and vote were combined for Items #10 and #11 under Item #11.]*

**11. REQUEST FOR APPROVAL OF THE SANTA FE REGIONAL EMERGENCY COMMUNICATIONS CENTER FY 2007/08 BUDGET. (BECKY MARTINEZ)**

Ms. Martinez noted the proposed budget is in the Committee packets.

Councilor Heldmeyer asked if the Capital Purchases is something which the City and County will split 50/50.

Ms. Martinez said no, because that is a total cost for computers which don't fall in the category stated in the JPA.

Councilor Calvert noted the actual in 2007 was considerably less than the budget.

Ms. Martinez said this is correct. She explained that there were as many as 14 vacancies at any one time, noting there is now only one vacancy. Also, some bids came in under the contract.

Councilor Calvert asked if we funded an excess of needs, and if so, is the excess proportionally distributed, or what.

Ms. Raveling said in the agreement a method is established for distribution of funds, but she doesn't recall that, noting she read something about how the cash was going to be distributed.

Mayor Coss said we can make that inquiry.

Ms. Raveling said she will have the answer for tomorrow's Finance Committee.

Councilor Bushee asked what portion of this budget comes from City funds.

Ms. Martinez responded, "None of it would be paid for with City funds."

Councilor Bushee asked about the sharing of capital purchases.

Ms. Martinez said that applies to any item of \$5,000 or more for each item. The capital budget is to purchase ten computers, and they aren't valued more than \$5,000 each.

Councilor Heldmeyer noted the line is that we are saving \$2.3 million in doing this, yet the total expenditures last year were just a little more than \$2 million.

Ms. Raveling said if they didn't spend the whole amount of the budget, then the City and County did not put the money in. For most of the years, it was just payment of actuals. The City's issue was that it was having to front all of the money before being reimbursed by the County.

Councilor Heldmeyer asked if, in the current fiscal year, the City gave the County \$2.3 million.

Ms. Raveling said currently, the City is the fiscal agent, so the City pays actual and then bills the County, so the cash balance doesn't grow.

Councilor Heldmeyer said the total cost is a little over \$2 million, and asked how the \$2.3 million figure was calculated, and how much it actually cost for the 2006/2007 FY

Chief Rivera said he believes that figure came from the 05/06 FY, when the RECC was fully staffed, and our percentage of the total, based on call volume, was about \$2.3 million. In 06/07, the RECC wasn't fully staffed, so they had a lot of salary savings.

Councilor Heldmeyer said when we start doing our budget, we are acting as if the \$2.3 million was just sitting there, but in the last fiscal year it wasn't sitting there.

Ms. Raveling said the \$2.3 million is based on what our allocation would have been if we would have continued contributing to the fund, so it is real money and money we didn't have to spend.

Responding to Councilor Heldmeyer, Ms. Raveling said the figure of \$2 million is only through February, and we are not done with the 2007 FY, so we are estimating \$2.3 million would have been our share.

Councilor Bushee asked Ms. Martinez to comment on the transition, and if it has worked.

Ms. Martinez said the transition hasn't been made. The JPA needs to be signed by all parties and will be effective July 1, 2007, noting DFA won't entertain the transition until the JPA is approved. She said everything is on track to get this in place timely.

Responding to Councilor Bushee, Ms. Martinez said some of the Board members were concerned about the employees, and met with the employees at a special meeting to address those concerns prior to adopting the JPA. She said the JPA provides that the City members of the Board [Police Chief, Fire Chief and City Manager] should report to the Council on a quarterly basis, and pointed out that the Council does approve the budget.

**Councilor Chavez moved, seconded by Councilor Wurzburger, to approve the RECC Joint Powers Agreement between the City and County [Item #10], and to approve the RECC FY 2007/08 budget [Item #11]. The motion was approved on the following roll call vote:**

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

**Against: None.**

## **12. MATTERS FROM THE CITY MANAGER**

Mr. Buller invited members of the Police Department to come forward for a very short presentation.

Detective Brian Gonzales introduced Detective Matt Martinez. Detective Gonzales said in response to the increase in gang activity in Santa Fe, a training has been scheduled on June 7, 2007, 8:00 a.m. to noon, at the Toney Anaya Building on Cerrillos Road. He will be inviting the County Commissioners, County Manager, and some of the lead educators on Alta Vista to attend. He said the training does pertain to what is happening in Santa Fe.

Mayor Coss thanked Detective Gonzales and Detective Martinez for their efforts.

## **13. MATTERS FROM THE CITY ATTORNEY**

### **EXECUTIVE SESSION**

- a) **Discussion of Land Swap with New Mexico Department of Transportation, Pursuant to §10-15-1(H)(8). NMSA 1978.**
- b) **Discussion of Real Property and Water Rights Pursuant to §10-15-1(H)(8) NMSA 1978.**

**Councilor Bushee moved, seconded by Councilor Calvert, that the Council go into Executive Session for the purpose of the discussion of the land swap with the New Mexico Department of Transportation and discussion of real property and water rights, pursuant to §10-15-1(H) (8). The motion was passed on a Roll Call vote as follows:**

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

**Against: None.**

**The Council went into Executive Session at 6:26 p.m.**

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

**At 7:04 p.m., Councilor Calvert moved, seconded by Councilor Ortiz, that the City Council come out of Executive Session and stated that the only items which were discussed in executive session were the land swap with the NM DOT and action regarding real property and water rights.**

The motion was passed unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzburger voting for the motion and no one voting against.

**14. ACTION REGARDING LAND SWAP WITH NEW MEXICO DEPARTMENT OF TRANSPORTATION. (ROBERT ROMERO)**

Councilor Calvert moved, seconded by Councilor Dominguez, to direct staff to proceed with the purchase agreement.

The motion was passed unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzburger voting for the motion and no one voting against.

**15. ACTION REGARDING REAL PROPERTY AND WATER RIGHTS. (KYLE HARWOOD)**

Councilor Ortiz moved, seconded by Councilor Calvert, to authorize the Mayor sign a mutual non-protest agreement with the Agua Fria Traditional Historic Village regarding the water rights transfers.

The motion was passed unanimously on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzburger voting for the motion and no one voting against.

**16. MATTERS FROM THE CITY CLERK**

There were no matters from the City Clerk.

***Mayor Coss said Communications from the Governing Body will be done at the end of the meeting.***

**END OF AFTERNOON SESSION AT 7:08 P.M.**

*The Council moved directly into the Evening Session without a break*

## **EVENING SESSION**

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

The Evening Session was called to order by Mayor David W. Coss, at approximately 7:08 p.m. Roll Call indicated the presence of a quorum as follows:

#### **Members Present**

Mayor David W. Coss  
Councilor Miguel Chavez, Mayor Pro-Tem  
Councilor Patti J. Bushee  
Councilor Christopher Calvert  
Councilor Carmichael A. Dominguez  
Councilor Karen Heldmeyer  
Councilor Matthew E. Ortiz  
Councilor Ronald S. Trujillo  
Councilor Rebecca Wurzbarger

### **E. PETITIONS FROM THE FLOOR**

**Fred Rowe, Chair, Ethics and Campaign Review Committee.** Mr. Rowe said at the April 11, 2007 Council meeting, the Governing Body adopted several amendments to make the board more effective to oversee clean and fair municipal elections. However, with no discussion, the Council also adopted an amendment to replace the board's membership, currently serving staggered four year terms, with a new board system to be appointed for two year terms following every municipal election.

Mr. Rowe asked the Council to consider two maximums for wise legislation: (1) if it ain't broke, don't fix it; and (2) please make sure the cure isn't worse than the disease.

Mr. Rowe said, with respect to #1, the two-year board turnover amendment, was adopted on a mistaken premise that it was needed to let the newly-elected Councilors have the right to appoint a member to the board. The current ordinance provides for four-year board terms, and that four of the initial board members appointed two years ago, serve only two year terms, in order to provide for staggered four year terms. He said the terms of those members will expire in October, creating four vacancies to be filled by four newly-elected or reelected members of the Council. In short, the system ain't broke and it needs no fixing.

Mr. Rowe said, with respect to #2, turning over the board's membership following every election, for two year terms would disrupt the board's continuity, experience and independent oversight of the campaign and the election process. Worse than any disease, this cure could kill the board.

Mr. Rowe said, "We respectfully ask Councilors to co-sponsor and approve the bill to be introduced by the Mayor later this evening, which would repeal the board turnover amendment. Thank you for your consideration."

**Jim Harrington on behalf of Common Cause** endorsed Mr. Rowe's statement. He said the change would have a very negative impact on the Board's independence and he urged support of the mayor's bill and the repeal of the two amendments, the second prohibiting placement of campaign signs more than 60-days before the election which clearly is unconstitutional and would make the City a target for lawsuits.

**Cliff Mills** said he is a registered voter in District 1. He said as the most tenured, two-dimensional artist with the City's artist vendor program, he is requesting a review of the ordinance regarding this program. In 2002 the ordinance was amended with the understanding that modifications would be made if needed. Among other issues, the ordinance does not address advances in technology. He asked to begin the process as soon as possible to get it finished by October.

## **F. APPOINTMENTS**

### **Extraterritorial Zoning Authority**

Mayor Coss appointed the following individual to the Extraterritorial Zoning Authority:

Councilor Miguel Chavez.

**Councilor Bushee moved, seconded by Councilor Trujillo, to approve the appointment.**

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

### **Sustainable Santa Fe Commission**

Mayor Coss appointed the following individuals to the Sustainable Santa Fe Commission:

Camilla Bustamante – term ending 5/2010;  
James Stanton – term ending 5/2009;  
Taylor Selby – term ending 5/2009;  
Louise Pape – term ending 5/2010;  
Robert Haspel – term ending 5/2010;  
Ben Luce – term ending 5/2010;  
Kim Shanahan – term ending 5/2009.

**Councilor Calvert moved, seconded by Councilor Bushee, to approve the appointments.**

**The motion was approved unanimously on a voice vote, with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzburger voting for the motion and none against.**

#### **Public Safety Committee**

Mayor Coss appointed the following individuals to the Public Safety Committee:

Frank Suto – reappointment – term ending 3/2010;  
Mike Mier – reappointment – term ending 3/2010;  
Nancy Owen Lewis – reappointment – term ending 3/2010;  
Herbert Harris – reappointment – term ending 3/2010;  
Mike Bowen – reappointment – term ending 3/2010;  
Henry Valdez – reappointment – term ending 3/2010;  
Peter Mizrahi – reappointment – term ending 3/2010;  
Maria Jose Rodriguez Cadiz – to fill unexpired term ending 3/2010

**Councilor Bushee moved, seconded by Councilor Chavez, to approve the appointments.**

**The motion was approved unanimously on a voice vote, with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzburger voting for the motion and none against.**

#### **400<sup>th</sup> Anniversary Committee**

Mayor Coss appointed the following individual to the 400<sup>th</sup> Anniversary Committee:

Thomas E. Chavez.

**Councilor Chavez moved, seconded by Councilor Bushee, to approve the appointment.**

**The motion was approved unanimously on a voice vote, with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzburger voting for the motion and none against.**

### **G. PUBLIC HEARINGS**

- 1) REQUEST FROM PALO ALSO, INC., FOR A RESTAURANT (BEER & WINE) LICENSE TO BE LOCATED AT PIZZA HUT #12958, 4250 CERRILLOS ROAD. (YOLANDA Y. VIGIL) (Postponed at the April 25, 2007 City Council Meeting)**

The staff report was given by Yolanda Vigil, noting that Palo Alto, Inc., is not within 300 feet of a church or school, and staff recommends that Palo Alto, Inc., be required to comply with the City's litter and noise ordinances as a condition of doing business with the City.

#### **Public Hearing**

**Linda Smith, District Manager for Northern New Mexico**, was sworn. Ms. Smith said Palo Alto opened 62 Pizza Huts in New Mexico, currently they have 22 licenses and are in good standing with ATF, and have owned all Pizza Huts in New Mexico since 1999. She said the reason for the request is because a percentage of ownership distribution among family members has changed.

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

**Councilor Bushee moved, seconded by Councilor Chavez, to grant the request of Palo Alto, Inc., for a Restaurant License, to be located at Pizza Hut #12958, 4250 Cerrillos Road. The motion was passed on the following Roll Call Vote:**

**For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Heldmeyer, Councilor Ortiz and Councilor Trujillo.**

**Against: None.**

**Absent: Councilor Wurzbarger.**

- 2) REQUEST FROM SWIG, LLC, FOR TRANSFER OF OWNERSHIP OF DISPENSER LICENSE #2748 from HALLUND, LLC to SWIG, LLC. THE LICENSE WILL REMAIN AT SWIG, 135 WEST PALACE AVENUE, SUITE 300. (YOLANDA Y. VIGIL)**

The staff report was given by Yolanda Vigil. Ms. Vigil said the location is not within 300 feet of a church or school, and staff recommends that SWIG, LLC., be required to comply with the City's litter and noise ordinances as a condition of doing business with the City.

#### **Public Hearing**

**There was no one speaking for or against this request.**

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

**Councilor Heldmeyer moved, seconded by Councilor Bushee, to grant the request for the transfer of ownership of Dispenser License #2748 from Hallund, LLC to SWIG, LLC. The motion was passed on the following Roll Call Vote:**



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

**Against: None.**

**Absent: Councilor Ortiz.**

- 3) CONSIDERATION OF RESOLUTION NO. 2007- 42. Case #M2005-44. 1034 & 1038 OLD TAOS HIGHWAY GENERAL PLAN AMENDMENT. DERRICK ARCHULETA, AGENT FOR SAFE PROPERTIES, LLC/KEVIN MCKOWN, REQUESTS GENERAL PLAN AMENDMENT FROM "RESIDENTIAL – VERY LOW DENSITY" to "RESIDENTIAL – MEDIUM DENSITY" FOR ± 2.179 ACRES AT 1034 AND 1038 OLD TAOS HIGHWAY. THE PROPERTY IS ZONED R-2. (GREG SMITH) (Postponed at January 31, 2007 City Council Meeting)**

***Items #3 and #4 were combined for purposes of presentation, public hearing and discussion, but were voted upon separately.***

Memorandum prepared May 3 for May 9, 2007 meeting, with attachments, to Mayor and City Council, from Greg Smith, Current Planning Division Director, is incorporated herewith to these minutes as Exhibit "1."

A color drawing of the proposed site, introduced for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "2."

A copy of a letter dated December 15, 2006, to Derrick Archuleta, with attachments, from Mike Henderson, is incorporated herewith to these minutes as Exhibit "3."

A copy of a letter dated December 21, 2006, to the Honorable David Coss, Mayor, from David S. Campbell, is incorporated herewith to these minutes as Exhibit "4."

A copy of a statement for the record, dated May 9, 2007, submitted for the record by Dale Schrage, is incorporated herewith to these minutes as Exhibit "5."

A copy of a letter from Kurt Young to Neighbors [dated approximately February 5<sup>th</sup>], submitted for the record by Julia Gilbert, is incorporated herewith to these minutes as Exhibit "6."

A copy of a letter to Eil and Kurt, from Jerry Trujillo, Vice President, FOP Lodge #3, submitted for the record at the Council meeting by Angelica Ruiz, is incorporated herewith to these minutes as Exhibit "7."

A packet of petition signatures in opposition to General Plan Amendment and Rezoning Re: 1034 and 1038 Old Taos Highway, submitted for the record by Julia Gilbert, is incorporated herewith to these minutes as Exhibit "8."

A packet of information containing copies of campaign statements, submitted for the record by James Rivera is incorporated herewith to these minutes as Exhibit "9."

A color map of the area, prepared by the City GIS Division, entered for the record by Jennifer Jenkins, is incorporated herewith to these minutes as Exhibit "10."

The staff report was presented by Greg Smith. Please see Exhibit "1" for specifics of this presentation.

#### **Staff Recommendation:**

The Planning Commission on June 29, 2006, recommended approval of the General Plan amendment and rezoning to RM-LD (Multifamily Residential – 12 dwelling units per acre), without conditions of approval. On August 23, 2006, the CPPC recommended denial of the General Plan amendment. The RM-10 application currently before the Council represents a downward revision from the application considered by the Planning Commission and the CPPC.

Staff did not recommend approval of the RM-LD application at the Planning Commission, and does not recommend approval of the RM-10 application as presented to the Council. The conceptual plan and other material submitted by the applicant do not clearly demonstrate that the site is suited for RM-10 zoning for reasons summarized below and detailed in the attached staff reports to the Commission.

#### **Public Hearing**

Responding to the Mayor, Mr. Sommer said his presentation in opposition will take about 45 minutes and there will be 8-9 people speaking.

Mayor Coss said he would like to hear first from the agent for the project proponent.

#### **Presentation by the Applicant**

**Tommy Jewell, retired District Judge, Albuquerque was sworn.** Mr. Jewel said he is appearing as one of three principals, along with Kevin McKown who isn't present, and Kurt Young who is present. These are the three principles in Safe Properties, LLC, the Applicant. He believes they are presenting an excellent opportunity to develop Affordable Housing here in Santa Fe. Mr. Jewell introduced the team of experts who will speak to the concerns which have been raised with respect to the project: Jennifer Jenkins, land use consultant to address the

planning issues; David Campbell, a land use attorney, to address the project compliance; Morrie Walker, engineer; Mike Henderson, a noise expert to address any noise issues.

Mr. Jewell said they have scaled this project back considerably, noting it is now nineteen units, and believe it is an excellent opportunity to provide housing to working families in the Santa Fe Area. They would appreciate Council consideration of the project.

**Jennifer Jenkins, Jenkins-Gavin Design & Development** was sworn. Ms. Jenkins is appearing on behalf of SAFE Properties LLC. She noted they were before the Commission two months ago, but asked that the application be tabled so they could work harder to address some of the concerns. They went back to the drawing board to reduce the density of the project, and had another ENN meeting to present the revised plans to the neighborhood.

Ms. Jenkins said we will be hearing a lot about neighborhood character this evening. Ms. Jenkins reviewed an aerial photo of the subject property, prepared by the City GIS. They are requesting zoning of RM-10, which would allow ten dwelling units per acre, and the actual density of the project is about 8½ units per acre. She detailed the zones around the property, noting there is a nice mix of housing in the neighborhood. Their intention is to mirror what is already developed directly next door, and to model their project on that. The average density in the area is about 8 dwellings per acre. The neighborhood directly adjacent to the south is developed at a density of 13½ dwelling units per acre.

Ms. Jenkins reviewed a blow up of the same area. She said one of the questions which arises in talking about general plan amendments and rezone applications, is how have conditions changed for the subject property over time. She said the most significant change which definitely has impacted the subject property is the 599 off ramp, so it has changed dramatically. She pointed out the condos to the south, noting Old Taos Highway is the high point, and everything drops from there, so we are at a lower elevation and everything to the east is lower.

Ms. Jenkins distributed copies of the Revised Site Plan, reducing the density from 25 units which was approved by the Planning Commission, to 19 units. Ms. Jenkins demonstrated the access points and the subject site, commenting that about 50% of the property currently is preserved as open space, which far exceeds the requirement for 5,000 sq. ft. She indicated the portion which will remain undisturbed, noting that the formal recreation area is well outside the drainage pattern for a tot lot or swings or such.

Mr. Jenkins said a combination of one and two-story units is proposed, with parts closest to the highway being single-story, and then everything drops down. They are trying to be sensitive to the most direct neighbors.

Ms. Jenkins said concerns have been raised about the terrain on the property. She said they have demonstrated that the property can be developed at the proposed densities, in compliance with the City's Terrain Management Ordinance, and anticipate no requests for variances. She said City staff has reviewed the conceptual plans and also have concurred that the project is in compliance with the terrain management ordinance. She stated that there are

other sites which have been developed which are much steeper and much more challenging than this one.

Ms. Jenkins said, in addition to complying with the Santa Fe Homes Program to provide five units, or 30% and priced affordable, they feel it is important to serve those in the community who can't qualify, but don't make enough to purchase a market rate home. They will be providing an additional 10% of affordability, an additional two units, which would be affordable of those earning 120% of the area median income as defined by HUD. What is special about this is where it is, and instead of two million dollars homes, to provide two moderately priced homes in addition to the affordable housing.

Ms. Jenkins said yesterday's multiple listing service indicates there are 87 homes on the market priced between \$850,000 and \$1.9 million. There is no demonstrated need for more high dollar houses, but there is a great demand for affordable and moderately priced home.

Ms. Jenkins distributed copies of a map of Santa Fe broken out by Council District, indicating projects doing at least 30% affordable, noting 100% of those programs are on the southwest part of town. She said the City's General Plan goal of creating socioeconomic integration in Santa Fe isn't happening. She believes this project is a move to correct that inequity.

**Morrie Walker, Walker Engineering, 905 Camino Vista, was sworn.** Mr. Walker said he was asked to look at the conceptual layout of the site to make sure it meets terrain management requirements. The full design is a way down the road. He wanted to sure they could make the project work at the desired density.

Mr. Walker said a certified topography was done with slope analysis. It was done at 2' contours. Most of the steep slopes are at lower sections so most of the development is at higher sections. Using the enlarged topography, he noted the site of the stormwater management which meets terrain management requirements, with a nice place for the pond to store water and drain it in 24 hours. The streets layout was approved by Ted Bolleter from the Fire Department. There will be terrain management and road requirements from Old Taos Highway down into the site. There will be some massaging of it to minimize disturbances of steep slopes.

Mr. Walker said, with regard to the concerns about traffic volumes, they anticipate 11-15 cars in the a.m. and 14-15 in the p.m. coming in and out of the traffic, based on the ITE rates. He said ITE did 200-300 different studies to determine how much traffic comes in on a subdivision, and he feels confident with the numbers. He believes it is a good site and they can make it work.

**David Campbell, attorney, Albuquerque attorney, was sworn.** Mr. Campbell said he practices land use law all over New Mexico, and this Council and City is at the vanguard of land use law, because of what you do with respect to your legislation. When you say you will have affordable housing in Santa Fe you mean it, you encourage it, and you put it in your general plan and your legislation follows that. When you say you will encourage infill housing, that infill

is a policy and you encourage and enforce that. And you respect the Santa Fe character known all over the world. You also say you will do the kind of infill which densifies the area rather than sprawl, and you do not sprawl.

He complimented Santa Fe on its law, commenting that being a councilor in Santa Fe is a very fun job, because you are the Legislators that adopted the general plan, and you now get to see a proposal which investors and owners have put into place using your guidelines. They are asking you for exactly for what you have asked them to do in both infill and future growth areas, and the City must encourage higher densities of residential and commercial development than existing zoning often allows. This is what we are requesting. We are requesting more density in the new zone than currently allowed, and to allow us to follow the program that you have set out as encouraging affordable housing and such. He spoke about an article in the newspaper which talks about the lack of affordable housing here and how this is driving people out. You have an opportunity to pass the zoning change and change the headline for tomorrow's newspaper and create the affordable housing you already have in your policies.

Councilor Ortiz noted there were deficiencies in the Affordable Housing map markup given by Ms. Jenkins. He can think of four projects which have come through which should have been highlighted: Harrison Road in 2004, in District 3; Kachina Ridge in 2003, in District 4; Earl Potter's project, the old Yucca Drive In project in 2006; and the annexation for Homewise in 2006. It is his hope that we also approve the Northwest Quadrant Master Plan. Those should have been included.

Councilor Bushee said there were also the 14 units in El Corazon de Santa Fe.

Ms. Jenkins asked to reserve the right for rebuttal prior to the close of the public hearing.

#### **Speaking in favor of the request**

Mayor gave each of those speaking in favor of the request two minutes each.

*All those speaking were sworn en masse by the City Clerk.*

**Angelica Ruiz, school board member, 7007 Vuelta Vistosa**, said she is supportive of this project because of the affordable housing component. Santa Fe has just completed one of its cultural, ceremonial displays of the Hispanic heritage for the Fiesta. She said people come from all over the nation and the world to see this cultural illustration of inclusion, community, collaboration and cultural unity. She said this is what Santa Fe is all about. It saddens her that people in Santa Fe who may not be native Santa Feans, choose to be non-collaborative and segregatory. This isn't Santa Fe. She asked, as someone educated in Santa Fe and Northern New Mexico, why is it not okay for her to be your neighbor or to live next to you. She said Santa Fe is the City of holy faith and she has faith in the governing Body to make the right choice for the people who live in Santa Fe.

**Ben Martinez 324 ½ Read Street**, said this developer has met with the Santa Fe Community Housing Trust, and has agreed in principle to work with the City and all parties to make sure these affordable housing units will be sold to people of low and moderate income. This is one of the first developments under the Santa Fe Homes Program, and shows the commitment to a larger percentage of the units to be affordable. He said he looks forward to helping families buy these homes. We are losing a fabric of Santa Fe when people work here but they cannot afford to live here. This is not a give away. The equity will be held by the City to ensure they will have long term affordability. This is to stabilize the community. All clients will be working people. They have to apply for a loan, and to qualify for the loan. The developer has taken all feedback into account, and has reduced the density. The parties have worked in good faith. Now is the time for all Santa Feans to come together to help each other.

**Richard Horcasitas**, said everyone here tonight cares about Santa Fe. Every week he sees articles extolling the virtues of Santa Fe out to the world, and what a great place Santa Fe is to live. This project is a good one, and an efficient use of our land, and gives 18 households an opportunity to live in one part of Santa Fe. He said many of the opponents of the projects live on larger lots with nice homes. He sees this as a matter of choices. This is a good project and asked for approval.

**Reggie Whitehead 1330 Pacheco**, asked the governing body to approve this development. He said this particular development will bring diversity to the City. A lot of the affordable housing is by Tierra Contenta. This project brings a cross-section of diversity and an opportunity for affordable housing on this side of town. Unfortunately, this hasn't been the case in other future developments. He is concerned about the article in today's newspaper which says the people are being driven out of Santa Fe, and the reason is that slightly more than half of the Santa Fe workforce still lives in the City. Those who moved, did so because of the high cost of housing. The developers of this project have gone above and beyond in the cause of affordable housing.

**Terry Rivera, native of Santa Fe**. Ms. Rivera read her statement into the record in support of this project. She asked why there is a double standard in Santa Fe. If you have enough money, there is enough water. If you are middle class or poor, suddenly the water and environment is at issue. She mentioned the developments that have spas. She believes Santa Fe is promoting regentrification by making local middle class and poor people live on the south side of town. The only protest she's heard is against Walmart, noting most of the local people are in favor of it. She doesn't believe this is the path Santa Fe wants to take, and said the locals are aware of what is going on in Santa Fe.

**Mitch Buszek, 111 Malaga Road, mortgage broker**, said his clientele are teachers, and other city/county government employees. The only way these folks can afford a home is under your Affordable Homes ordinance. He has qualified many people for a loan, and all they

need is a home under \$200,000. He said many of our agencies depend on these people getting housing. People move here for a job but cannot afford a home. We have serious issues which impact the health and safety of our community and our children. We need housing that these key public employees can afford.

**Mike David 735 Columbia**, said he recently located here from Albuquerque. The recent New Mexican news article seems to indicate that the recent consulting survey is statistically valid, based on the number of questionnaires submitted. He is speaking about affordable housing in general. The survey demonstrates there is a quantifiable, economically-driven flight from the city based on unaffordable housing. The immediate financial result of this is downtown economic tax revenues for the City, among other obvious negatives. The same lack of affordable housing has the likelihood of creating a racial socioeconomic divide in the City, an unfortunate legacy with obvious historic implications. If Santa Fe is an attractive new residential opportunity for some, then it must remain attractive, desirable and viable for those with less financial opportunities.

**Len Montoya P.O. Box 91, San José**, said he doesn't live here because he cannot afford to. His dream is to buy a house and live here. He sees his membership [union] slowly moving out of here. He said "we" did a mailout last week, and 80% of his membership lives outside of Santa Fe. He said this is not right. Last month he spoke to the Council and talked about GRTs, and said the GRTs are going to Rio Rancho and Albuquerque. We are sending our money south. We have an opportunity to change this, and he urged approval of this project. He said, "Live and let live."

**Benito Martinez, 1521 Kachina Ridge Drive**, spoke about Joaquin Cordova, the Boys and Girls Club youth of the year five years ago. Mr. Cordova had a dream to graduate from high school and to go to college, and on Saturday he will receive his degree in Social Work. He said Mr. Cordova spoke with him about being able to sustain himself in Santa Fe, and being able to live here. He said the influx of new people coming here isn't a bad thing economically. However, the majority of these people who come from the peripheral area around the subject property, have second and third, and who knows how many other homes. He said his parents are in favor of this project, saying his parents bought one acre a mile from the subject property, for \$10,000 in 1976. He said they built a home for them and developed it 13 years ago, and they are going to live there. He said it is unfortunate that the vast majority of Hispanos and Latinos do not live in this peripheral area. He asked the governing body to stand up for the community, and prevent our community members from moving down to Rio Rancho and Albuquerque, and give them, Joaquin Cordova and all of the young people served by the Boys and Girls Club a sustainable chance to live in Santa Fe. He truly is concerned about our youth, and he asked the Governing Body to vote yes.

**Alonso Gallegos**, lives in south Santa Fe County because of the high cost of living in Santa Fe, although he grew up in the city. He is here on behalf of his children and



grandchildren because he wants them to have the opportunity to live in Santa Fe. He hopes the Council lives up to its policy on affordable housing.

**Shawn Gormley**, former resident of Santa Fe, said he has been forced to move out into the County as well. He is here to support all residents of Santa Fe. He doesn't know if his three children will be able to live in Santa Fe, and wants to build a good future for them. He has worked for 22 years to support them. He said he has expressed an interest in buying one of these houses.

**Kathy Thompson**, lives in the County. She said this is a wonderful opportunity for the City to support this program, noting there is no Affordable housing north of Santa Fe, and asked the Council to support this project.

**Kim Shanahan, 346 Calle Loma Norte**, said Kurt Young is a friend of his. He said Kurt Young is a lifelong Santa Fe resident and has lived in the neighborhood we are talking about. Mr. Shanahan has been renting from Mr. Young for two years, saying he pays market rates. Mr. Young is a local guy from a local family and intends to do right by the neighborhood he loves. The other reason he is here is that he was a member of the Planning Commission when the project was moving forward. He said the last time it was before the Planning Commission, he recused himself from that case at the insistence of the neighborhood, after disclosing that he rents from Kurt and is a friend. He feels the reason he was asked to recuse himself is because the neighbors knew how he feels about the policies of the City, specifically that inclusionary zoning, as onerous as it may be to the development community, is something in which he believes and has supported. Inclusionary zoning mandates that when development occurs, no matter where it occurs, 30% of the project will be affordable. He said Kurt has never resisted that reality. The second policy is infill, which is happening in this area. He urged the Council to do the right thing and recognize that inclusionary zoning and infill is right for Santa Fe.

**Andrew Perkins, 415 Griffin Street**, said he lives in a quad and has no neighbors. The 19 lucky people who will have a chance to live in Mr. Young's development have a chance to live in this neighborhood, and wishes he was one of those. He said if the Council doesn't approve this project, it will polarize this City. He said there is cultural diversity in Santa Fe, but they don't want it in their neighborhood. He wants it here. He urged the Council to approve the project. He said the neighborhoods are collapsing, and becoming a refuge for non-residents, noting that more than 30% of the housing belongs to non-residents. These 19 households will be residents to enjoy our schools and our culture.

**Ms. Ruiz**, who spoke previously, submitted a letter for the record from FOP Lodge #3 [Exhibit "7"].



**Kurt Young** said he is one of property owners. He said when he first returned to Santa Fe, he needed a place to stay, but he couldn't afford to buy what was out there. The opportunity arose for him to buy a condo adjacent to the property which became his home. He said ownership means a lot to him and everyone. He said he wanted to be able to return the favor, and purchased the land next to him, after discussing the possibility of affordable housing with Tommy Jewell. It is close to town, and people could walk to Zozobra and experience living downtown. Mr. Young said he grew up on the south side, noting most of the affordable housing is on the south side. This project is about economic diversity, and giving people an opportunity to live in this area who might never have another chance to live here. He said he has been working for three years to get affordable housing in this place. He said he could have built million dollar homes three years ago, but he wanted to go forward to build affordable housing. He said this decision is on "your" conscience. If it is this Council's decision for him to build more million dollar homes here, he will do so. However, he hopes the Council votes with its heart.

**Tom Hasey, VP of Premier Development, former mayor of Malibu California**, said his job this evening is to try to persuade the Council to support this project. He said land use issues were always the most contentious issues facing the City of Malibu, just as in Santa Fe. He said Santa Fe has a unique sense of place and an outstanding quality of life which it is the Council's job to protect, preserve and enhance. Santa Fe, like Malibu, has an affordable housing dilemma which it is the Council's job to solve. He said it is clear that Santa Fe is trying to reconcile these two often conflicting goals. He said smart growth advocates don't promote affordable housing in localities where they want to pass land limiting policies. Thus, they make housing less affordable to those who need it most. He referred to the June 29, 2006, Planning Commission minutes, and the August 23, 2006, minutes of the Planning Policy Committees, to see such advocates in action. He believes the opponents of this project, are sincere in their opposition, have said affordable housing is not an issue, that this project will result in run down, short term rental property, and there is no need to "shoe horn" high density homes into a low density neighborhood. He pointed out the dearth of affordable housing in Council District 1, and he hopes the Council will support this project.

**James Rivera**, resident of Santa Fe County, but grew up on McKenzie Street. He is here to speak in support of this issue, because he grew up here, and he is seeing how biased people are about their neighbors. He said there are now 6 foot walls on Alto Street where once there were no fences or small fences. He asked the Councilors to forget about the votes at the election and to reach deep in their hearts for the people, and let people be able to stretch their dream of owning a home in this part of town. He said the Councilors can explain to their constituents that they did this for the good of the people who want to live here and not to have to commute from Albuquerque. Mr. Rivera quoted from the Mayor's campaign literature which said, "I will ensure effective implementation of Santa Fe homes so our family and friends don't have to commute long distances every day, but can actually live in the City where they work." He wants to see this happen.

**David Ortiz, Calle Contenta**, lives on the south side, and was born and raised in Santa Fe. He has been an advocate of affordable housing for more than twenty years, is a founding member of Habitat for Humanity, and served as a Vice President of Neighborhood Housing Services, now part of Homewise. He said it is unfortunate he has to be called from his home to speak this evening about affordable housing, when Santa Fe was developed with affordable housing and poor people have lived next to rich people all of their lives. Affordable housing should be here all the time, and he shouldn't have to defend affordable housing in this project. He has two children in their 30's who can't afford to live here, so they live with him – they have a multi-generational family, and his children can stay there as long as they like. One works for the City and the other for the State, but their salaries won't qualify them to buy a house in Santa Fe. We need this project and he urged approval by the Council.

**Debbie Jaramillo, 148 Bob Street**, said her family lives in one of the oldest barrios in Santa Fe, Barrio Torreon, noting Councilor Bushee also lives in this neighborhood. She said she is glad it has not been defined as a historic district. She said when we were discussing the H-Districts she made reference to how unfortunate it is that we have continued to paint our town brown only to move the brown people out. The living history of this town no longer lives there. One of the most difficult things she had to learn is how you know when you are making the right decision, and it always helped her to consider the greater good. She said she is reminded of a movie where this statement was made, "You know things have changed, but again they haven't." She said nothing has changed with regard to the issues since she ran for office since 1988, with the exception of the short time she was in office. She said she held the title, and proudly still holds it as the reigning queen of affordable housing because we did a lot during her term in office to help the people who needed it most in this community. She believes this administration has a chance to revive what has been lost over the past few years, not just tonight, but in the future. She said, this really isn't about "us and them," and she is sure when the opponents speak, some of their best friends will be Hispanics, because that is what divisiveness does. It creates these discussions. It's not going to be against race. She suggested the Council just look at the greater good of this community, because the greater good is about what is best for all people and not just about affordable housing. She believes this will help you make the right decision.

**Gloria Mendoza** asked the Council how many years they have been hearing the same thing from this community about affordable housing. She asked how many people have to come over here and support affordable housing. She asked the Council to stand up for affordable housing.

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Mayor Coss noted that it took about an hour and five minutes for this portion.

Karl Sommer asked if the opponents can have the same amount of time, saying he doesn't want to be limited to 45 minutes and 8-9 speakers. He said they will not exceed the time allotted to the other side.

Mayor Coss asked Mr. Sommer to present as he intended, and if there are others who want to speak, they will each be given two minutes to speak.

### **Speaking against the request**

*All those speaking against the request were sworn en masse by the City Clerk.*

**Julia Gilbert, 327 Calle Loma Norte**, noted the speakers this evening will include Fletcher Catron, Dale Schrage, Fabian Chavez, Dick Kropscot, Margie McGregor, Ellen Delfino Chavez, Ann Shefflin and Karl Sommer, attorney, and each person will address a separate issue. They strongly oppose the requested change to the general plan and the rezoning request. In order to see that opposition, she asked those in the audience who aren't speaking to please stand raise their hand if they oppose the plan. She presented a packet of petitions for the record [Exhibit "8."], noting that each signature is a separate voice in opposition to this project.

Ms. Gilbert said the real question is why they are opposed. Under City Code, this land is designated as an area of mountainous and difficult terrain. She said much has been made of the five affordable housing units which must be provided, but no one is really paying attention to the land and they want to focus on the land. This case really is about proper planning of growth in existing neighborhood in a manner which pays deference and respect to existing conditions. She asked if all the studies done and all the zoning laws passed within the past 25 years are suddenly obsolete. She said "we" submit that the land has not changed in the last 25 years, and it has not changed since it was called mountainous and difficult terrain, and we don't understand a justification to change the planning and zoning.

Ms. Gilbert said she wants to make it clear that we support the wisdom of the existing general plan and the existing zoning. She read from a letter dated "something like" February 5<sup>th</sup> [200?], although the letter isn't dated, because it references a meeting [Exhibit "6"]:

Young] have owned the property for the last few years and have struggled to decide what to do with it. Our first idea was to build big houses there and that idea while feasible is not desirable by many of the neighbors..."

Ms. Gilbert said we don't understand why there was a struggle as to what to do with that property, and none of the neighbors are opposed to the current zoning. Most neighbors were aware that two houses could be built, and the asserted neighborhood opposition to two homes, doesn't justify a change in decision tonight making this application approved.

Ms. Gilbert further quoted from Exhibit "6": "We hope you attend and provide feedback .....in the process of planning a good neighborhood." She said the developer invited us to provide feedback and the City has provided feedback. The CPPC recommended against this project. The City Planning Department has now recommended against this project four times.

**Fletcher Catron 1062 Encantado Drive**, said he has resided in this neighborhood since he was 12-years old, noting he is an attorney. He will be speaking this evening about the legality of the general plan amendment requested by Mr. Young.

Mr. Catron said, in response to previous remarks, he truly resents being told he, and others living near him, are part-time residents. Of the 17 people living near him, only one is a part-time resident, the other 16 work and live full time in Santa Fe.

Mr. Catron pointed out that the general plan is a carefully considered planning document which takes into account what exists, as well as what people want for the development in the town. As stated in the General Plan introduction, "This document represents the goals and desires of the Santa Fe community as a whole, and should be recognized as the City's foremost public statement about Santa Fe's future."

Mr. Catron said after consideration, the City planned the entire Vista Encantado neighborhood to be appropriately held at very low density. The only exception to the very low density in the area has been the Calle Loma Norte and Los Lovatos areas, which preceded the General Plan. He said despite that these were in place when the General Plan was adopted, this lot, this area, was kept at very low density, so it has been considered and rejected for high density in the past and in the plan.

Mr. Catron said in 1967, the City decided this area should remain at a low density with a single dwelling per acre and the applicant now asks you to revisit that decision again, and allow high density housing, which requires an amendment to the General Plan. The Council has the discretion by Code to amend the plan when certain criteria are met. If those criteria are not met, then the Council does not have the discretion to amend the plan. Mr. Catron quoted from the Code:

, "...Should be an area larger than a single property and of general applicability. Generally, the area should be at least a section of the City and should be larger than a single block or its equivalent. The amendment has to make a contribution to a coordinated, adjusted and harmonious development of the municipality." [He said it doesn't.] "The growth and economic projections contained with the general plan have to have been shown erroneous or to have changed, or no reasonable locations have been provided for certain land uses for which there is a demonstrated need." [He said there are lots of other locations where land uses of this nature could be built.] "Conditions affecting the location or land area requirements of the proposed land use have changed." [Mr. Catron said they have not.] "And, the effect of the proposed change in land use will not have a negative impact on the surrounding property. The proposed change in land use must be related to the character of the surrounding area, or a provision must be made to separate the proposed change in use from adjacent property by setback, landscaping or other means."

Mr. Catron said, in this case, he believes none of these criteria have been met, and as a consequence he does not believe the applicant has met the minimum conditions which might allow you to make a change in the General Plan for this particular lot. Rather, he is asking you to amend the General Plan because he has embarked on a speculative venture and it won't pay

out unless you do amend it. Nothing has changed during the applicant's ownership, except that the applicant proposes to put 19 dwellings in a space long planned for two dwellings. Two dwellings is consistent with the neighborhood. The current General Plan considers the position of the highway, although it might not have been built at that time, it was in the plan. It considers the character of the neighborhood, the type of development appropriate to the neighborhood and the nature of the subject property. Mr. Catron said the applicant has given no good reason for the Council to alter the City's primary planning document, and should therefore reject the amendment to the General Plan.

**Fabian Chavez** said he will be 83 on August 31, 2007, and he was born in Santa Fe on Abeyta Street and grew up on Acequia Madre. He and his wife first rented a home on Acequia Madre/San Antonio, and then a house on Catron, finally purchasing a home on Lovato Heights on Cordova Lane. After retirement, he and his wife moved to Calle Loma Norte. He said originally, he was just going to tell the Council that, without going through all the legalities, engineering and architectural, he would beg you to go look at the land yourself, and wonder what planning process would bring this issue before this Council. He believes it has been a waste of a lot of people's time. He said affordable housing is very near and dear to him as well. He can see what developed here. He said they hired professional, well made presentations, to try to salvage a "piece of junk" property which was skipped when the land was developed. He said the applicant purchased it and is trying to decide how to use it under present law. He believes that anyone who would build a home here should have their head examined, because the property is useless.

Mr. Chavez said Mr. Young figured out a way to develop the property: affordable housing in the heart of northwest Santa Fe. He said the people who developed next door would have developed the subject property if it was developable. Now, they come to you and talk about first 40, then 22 and finally to 19 units, and 30% affordable housing. He observed that the engineering of that terrain would be so costly they couldn't afford to build affordable housing, nor non-affordable housing. He begged those who have lived here all their lives not to be allowed to be convinced to do something you should not do in the name of race and affordable housing. He served many years in the Legislature. He urged the Council to make some of its property available for really well developed affordable housing, commenting the State owns millions of acres of land, a lot of which surrounds the City. We should petition the Legislative leadership for property where we can build some real affordable housing, and not be subjected to a presentation such as this one. He offered to assist in the lobbying effort.

**Dale Schrage, 1071 Calle Largo**, Registered Engineer, spoke about the topography of the subject site. Mr. Schrage read his statement into the record [Exhibit "5"]. Please see Exhibit "5" for specifics of this presentation. Mr. Schrage summed up the issues:

- "1. With so much of the property having high slope plus the arroyos, this parcel is really unsuited for high-density development. There are, however, portions of the two lots that are suitable for building under the existing R-2 zoning;

2. The large portion of the property that will be covered by impervious items will result in serious drainage problems;
3. There will be only sufficient parking for two vehicles per residence but only single-car garages. The second vehicle will be parked on the street; and
4. The property is unsuited for high density development for reasons of slope, drainage, and over-crowding.

He concluded that this is fundamentally a very bad proposal. There is nothing good about this. This property is entirely unsuitable for high-density development. This proposal should not be approved."

**Richard Kropscot, Calle Loma Norte, south of the subject site**, spoke about the issues of fire safety and environmental impacts in such a project. Before moving here, he was the Associate Director of the Lawrence Berkeley Laboratory near University of California, and he was responsible for the health and safety of 2,600 employees. They always worried about earthquakes, but in 1990 there was a huge fire near the Laboratory which burned over 2,000 homes. It was a high density development with very little room between houses and very small streets, which caused a problem. There was only one exit, and the fire particles blocked the road and people couldn't get out and many died. There was one area which was similar to this one, with a steep canyon containing condos and apartments, and when the fire got into this canyon it created a chimney effect. This proposal is for 19 homes. The homes will be on one acre, and will bring in a lot of combustible construction material which can create a chimney effect if there is a fire. He spoke about the problems created when people try to get their possessions out of their houses to their cars, and will wait til the last minute and then try to get out on the steep driveway. He spoke about other situations which could hinder emergency vehicles coming into the area.

Mr. Kropscot spoke about the pollution. These houses will be close to the 599 clover leaf which is heavily traveled, and the combustibles will come down into the arroyos around the buildings creating pollution problems. There also have been problems on the clover leaf caused by accidents. He is concerned about an accident involving a gasoline truck on the clover leaf. He said it is his professional opinion that this arroyo is a terrible place for this development, and he believes it will compromise the health and safety of the neighborhood.

**Margie McGregor, 264 Calle Loma Norte and President of the Board of Managers of the Placita de la Vista No. 2 Homeowners' Association**, a community of 53 homes abutting the proposed development to the south. She spoke about their concerns about sewage in the proposed developments. The area is served almost exclusively by a gravity flow sewer system. The Association has spent more than \$50,000 in the past three years to maintain and repair its privately owned, gravity flow sewer system. The proposed development will require a complex, low pressure pumping system to pump sewage out of a hole next to the old Taos Highway, noting these systems are expensive to maintain and can have failures. The low pressure system with lift stations will be required because of the steep and difficult terrain and the lack of gravity flow sewer to this property. She said the sewer system proposed points out

the impracticality of developing this property at any level of density. Increasing the allowed homes from two to nineteen will add to the existing problems.

The Vina neighborhood on old Taos Highway, was zoned at R-1, and at a much lower density. Many homes there utilize septic systems because of soil conditions which make this appropriate. The residents of the proposed development will be responsible for the grinder pumps and lift stations. A lack of maintenance could easily result in a failure of the system, with raw sewage spilling into the drainage which runs through the property and right next to the Association's homes. The proposed increase in density raises the danger to the neighborhood. The proposed system maintenance and upkeep will be funded by the development's property association homeowner dues or by a special assessment. This would be an expensive addition to the budget of any homeowner. She wonders what would be the impact on the affordability of affordable homes. If the long term maintenance and energy costs are high because the development is expensive to build, and requires complex solutions because of the terrain, how does this square with the goal of providing long term affordability. One factor in affordability is the long term cost.

**Ann Shefflin, 1121 Paseo Barranca**, said she is a resident directly affected by this project. She said many of those opposed to this project are very much in favor of affordable housing. She said she had to take the time to understand the impact of this development. She has heard that she and her neighbors are wealthy, live in million dollar homes and have 2-3 homes, which isn't her experience in her neighborhood. She moved to Santa Fe 14 years ago, and the only home they could purchase was in the County, where they lived for a number of years. They decided to move closer to town, noting she has been the Membership Director at the Museum of New Mexico Foundation for the past four years and works at a non-profit. She said in looking for a place to live in town was difficult, but they did find something they could afford on the north side in a wonderful neighborhood.

Ms. Shefflin said many of her neighbors, like her, work full time, and contribute to the community, and detailed the situations of some of her neighbors. She thinks this isn't about affordable housing, but more about good development versus bad development. She said this a very difficult piece of land, very small and immediately adjacent to the highway, and not a place where she would like to live. She said infill and affordable housing is important to the City and we all support that. However, she doesn't want the Council to judge affordable housing by a different standard than other housing. She said if you look closely, you will see this is poor development, and suggested that Council not throw away the good planning rules. She urged caution in considering this development.

**Karl Sommer, P.O. Box 2476**, handed out a map to the Councilors. *[Stenographer's note: a copy of the map was not submitted for the record.]* Mr. Sommer said he grew up at 783 Paseo de la Cuma. His mother's family has been in Santa Fe for 485 years, and both he and his children speak Spanish. He said this has nothing to do with what he has to say. He said, just like the references to races, how long your family has been here, have nothing to do with the issues in this case. He said Mr. Chavez said it well: don't be goaded into doing something



which is not right because someone said or implied that these people don't want those people next door, or that these people have been here longer than others. He said north Santa Fe is filled with people named Smith, Sommer, Sanchez, Valencia, Rehorn, and it has been like that since the north side was developed and it is still that way. This has nothing to do with this case. This case is about whether or not the City General Plan should be changed, whether or not the elements have been met and whether to rezone to allow this development. He said there is a lot of criteria.

Mr. Sommer said in 1997, this parcel was rezoned R-2 in accordance with the General Plan at the time, with limitations related to terrain, and not limitations related to race or how long people have been here. In 1999, the General Plan was redone, noting the map he distributed is the General Plan map. He and Mr. Campbell went to law school together, and are friends. However, Mr. Campbell left out one particular element, and made a lot of laudatory remarks about the City's General Plan and applauded the City for this Plan and its policy, but he didn't say the map is wrong. He didn't say that the map needs to be changed. Mr. Sommer said Mr. Campbell implied that the City got the Plan wrong, but the City didn't get it wrong. He said the thousands of hours the community and staff put into the plan were not wrong.

Mr. Sommer said Mr. Catron gave the criteria for amending the General Plan, which is a whole lot like amending the Constitution. It should not be done lightly, it should have broad effect and appeal, big consequences and deal with sectors of the community, not little pieces of property, because this isn't the way you do general planning. He said the applicant doesn't meet the criteria.

Mr. Sommer said in the first two instances the Council was asked the question, and the Council said R-1 or R-2 in 1997 and 1999. You are asked this again tonight. There is only one thing which has changed, you are being asked to judge it only by one criteria which is whether or not the project will produce some affordable housing. He said any project on this property will produce some affordable housing, either by way of a contribution in lieu, or produce 1/3 affordable housing. He said when you look at every other standard which this Council has with respect to judging a proposal, it fails to meet the test. First, does it meet the test for the standards by which you should judge an application – it does not. Does it meet your corridor production and open space – it does not.

Mr. Sommer said he heard a relative comparison made by Ms. Jenkins about this property versus the North Hill Compound to the south. He watched that property go up, and represents the person who developed, and knows exactly why it stopped where it did: because it was not the same kind of terrain. He said Ms. Jenkins said, "We have 8.5 units to the acre. We're getting zoned at 19 on two." She then said just over 50% of the property is open space. This means that 19 units are going on one acre which is 1/2 of this property. That is the effective density, and there is nothing like that in this neighborhood. To say this will mirror the neighboring properties, defies logic. Mr. Sommer said the neighboring properties on the map do not include just Calle Loma Norte, but includes all of the area around it. He said he lived next door to this site growing up, and his father lived down the street and it isn't 19 units to the acre.

Mr. Sommer said this City has had a long time policy with respect to the provision of



utilities. One of which is if you can produce a development which has gravity flow, that is the preferred method of development. If you don't have a gravity flow sewer system, you will have lift stations. The lift stations will be privately maintained, and eventually somebody will call the City saying their lift station failed and there is something in the arroyo. Mr. Sommer believes this will happen on this property sooner or later, because there isn't one system which has been produced on a low pressure basis which hasn't had some failure, and it will happen here. It doesn't meet the test of whether this plan is better than the proposed plan. The only thing which requires a low pressure system is a change in the current plan, and the current plan doesn't require it.

Mr. Sommer asked, with respect to public health and safety, what is the current plan. He said the current plan says two units on these two acres, which means you don't need an entrance and an exit because you have a driveway to two house. For every development he has brought before the Council, staff has asked where is the emergency access. He has seen plans go down with much less density because there is no emergency access. He said the current plan doesn't require emergency access. The new plan has 19 units with no emergency exits. There is one way in and one way out. If there is one accident at the Y in this development, 80% of the homes would be trapped behind that accident. This is the reason this Council has always asked about the emergency access, and how to get emergency vehicles into and out of the area. He asked if this plan meets the test and does it tell you the current plan was a mistake. He said it says the exact opposite: the current plan is wise and the current plan makes sense. The proposed plan doesn't meet this test.

Mr. Sommer said we have already talked about compatibility with the existing neighborhood, and you can make that assessment for yourself. The people who live there do have a vested interest in keeping things the way they are.

Mr. Sommer said the only issue presented to the Council for purposes of making this change, ignoring all other applicable tests, is will this project produce affordable housing. It will produce 5 affordable houses with two above affordable, but in the mid-range. It also will produce twelve additional units at full market price on this property. He noted no one commented about the 12 new units which will be at the maximum price because they have to pay for the affordable housing, so they will pass the costs of affordable housing on to the neighbors living in the development. He asked if the five affordable units, wherever they are, are worth throwing out the window all the rules and tests by which you judge any other general plan amendment. He said, "I don't think so."

Mr. Sommer said the implication he heard tonight is that the place where he grew up, and the people with whom he grew up, and the people he is representing this evening, have a problem with others who have different last names. This wasn't his experience growing up, and it still isn't his experience. This is a room full of people who contribute to the community and have lived here a long time, some longer than others, and are a valuable part of this community. Their concerns about the way they live are no less important than the concerns about affordable housing. These are all important issues, but the affordable housing issue doesn't mean these people don't have the right to stand up and say they are concerned about how they are going to live, and what their neighborhood is going to look like. If this becomes the standard by which the discourse in this town will continue – that you cannot object without

being labeled a racist, an elitist, or biased or prejudiced – then we are headed for more trouble. He reiterated that those items have nothing to do with the dialogue here. There is one question to ask: is what is being proposed better than what is there, and by every other measure with the exception of affordable housing, it is not.

### **Rebuttal**

Jennifer Jenkins said, with respect to the proposed density on the project, per Chapter 14, it is calculated on the entire acreage and not just on the land which is being developed with impervious area. The fact that we are clustering the homes together in order to preserve open space is encouraged by the General Plan and Chapter 14, which is a positive. The fact we have 50% open space is something she is very proud of. This is the same way we analyzed the density of the neighborhoods to the south, which is the development pattern they seek to mirror.

Ms. Jenkins said, with regard to fire access, she has reviewed the Plan with Assistant Fire Chief Bolleter, and the roadways and turnaround area comply with the International Fire Code. That Code states that you can have a maximum of 30 dwelling units with one point of access. However, if Chief Bolleter requires a secondary, emergency access, it is easily provided. It is also likely that, based on the final design as we develop floor plans and how these units are clustered and attached, we likely will have automatic fire suppression in all of the homes. She said there are no areas which exceed the maximum distance as required by the International Fire Code, so we have taken it seriously.

Ms. Jenkins said there is a requirement for a pressurized sewer. If the were to build two large homes, those would require a pressurized sewer as well. The sewer line is on Old Taos Highway and the subject site is lower than Old Taos Highway, and there is no way to gravity feed this site whether it is two or nineteen homes. She said, yes the homeowners' association will be required to maintain that system. However, per the City's Affordable Housing Ordinance, these home prices must be adjusted to compensate for homeowners' association fees, so your ordinance took this into account. The effective price of those homes are reduced to compensate for that monthly expense.

Ms. Jenkins said, with regard to terrain, it is a technical issue, and the people most qualified to address that issue are Morrie Walker, Ellery Biathrow, City Engineer, and other city staff who have reviewed this plan, and found this property can be developed at the proposed densities in compliance with the City's terrain management rules. She appreciates Councilor Ortiz pointing out that she failed to mention the Northwest Quadrant, and said she hopes that plan is adopted. She said that area is not a prairie, and there is terrain which will need to be engineered properly. She said Tierra Contenta also is not flat. This is the reason the City has engineers on staff, to ensure everything complies with the Code.

Ms. Jenkins corrected that, with the two homes which could be built under the current zoning, the project would result in zero contribution to affordable housing – there would be no cash contribution, there would be no units. She said all that would be required would be to obtain a building permit from the City, and there is no contribution or impact fee which would come with that.

Ms. Jenkins said David Campbell said Mr. Sommer and Mr. Catron correctly point out that there is a necessity under the General Plan to point out why the plan should be amended. Mr. Campbell distributed a copy of the policies which apply to this plan, which this proposal will meet. [See Exhibit "1"]. The conditions in this area have changed as a consequence of the transportation needs. In an effort to alleviate the regional system of transportation, local conditions were impacted with the construction of the off-ramp adjacent to this site, which is a huge change in the land surround this area which has to be considered as to whether this continues to be an appropriate zoning for this site.

She said Mr. Campbell said this City Council has said it wants affordable housing throughout the City, and not just in one quadrant. She said there has been a demonstrated need for affordable housing, and there is no affordable housing in this area, and this proposal meets that criteria for a change in the general plan. She said the general plan is the heart of the planning process, is intended to be a living document, and as such will be subject to more site specific and comprehensive amendments over time. She said it is not, as Mr. Sommer said, like changing the constitution, it is a living document and something which should be changed.

She said Mr. Campbell said this Council and City have a vision that is respected throughout the State of New Mexico, which is a strong stance on affordable housing, infill development and the mix of housing throughout the community. This vision is being tested here tonight, and he they ask that the Governing Body look at all the reasons in the general plan that they have provided, as well as those discussed this evening, and this the opportunity to turn that vision into reality with the approval of this very reasonable zone change. She requested approval of the requests.

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Mr. Sommer noted Ms. Jenkins spoke before everyone had a chance to speak, and asked if there is time for additional speakers.

Mayor Coss said they have used an hour and five minutes, and allowed the gentleman to speak, saying he may have to let Ms. Jenkins speak again to address any remarks.

**Ernest Forbes, 218 Calle Loma Norte, was sworn.** Mr. Forbes said he looks right out on the retaining wall running along 599. He said his friend is hard of hearing and the sound doesn't bother him. He said sound intensity increases with the inverse square of the distance. He said this is a piece of junk property, and the noise of the trucks for those living against that retaining wall will be incredible. He asked the Mayor and Council to go out and look at this property. He said these poor people who will move there will move out right away because of the noise. Mr. Forbes said someone needs to send the police out because the trucks going down the hill use their jake brakes all the time and make a lot of noise.

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

*There was a short recess at this time.*

Councilor Calvert said this is a very emotional issue, and he is trying to stay on point with this request. With regard to the rezoning criteria, he said one of those listed is the applicant's burden of proof, and it says, "Since the community and neighbors have an interest in stability of land use and zoning, the applicant must provide a sound justification for the change. The burden of proof is on the applicant to show why the change should be made, not on the City to show why the change should not be made." He said this is quoted as context for further comments. More specifically, it goes on to say that one of the criteria for rezoning is whether the existing zoning is in appropriate. "The applicant must demonstrate that the existing zoning is inappropriate because, (1) there was an error when the existing zoning map pattern was created."

Councilor Calvert spoke about the history of the site. In 1997 it was rezoned to R-2, and the reason it wasn't given more density was because of the steep terrain. The applicant points to the Calle Loma Norte neighborhood as the reason for similar zoning or neighborhood, but that neighborhood was in existence in 1997 when the rezoning was done, and was considered at the time. The biggest difference between Calle Loma Norte and this site is the slope of the land.

Councilor Calvert said another criteria would be that changed neighborhood or community conditions justify the change. The only thing which has changed since the 1997 rezoning, is the addition of the 599 off ramp which, to him, makes this property even less developable, and creates more problems.

Councilor Calvert said, "Also in there it says a different use category is more advantageous to the community as articulated in the comprehensive plan or the City Master Plan." He believes this is debatable, but he will address this when he gets to the General Plan.

Councilor Calvert noted the City adopted the Highway Corridor Plan by resolution, and therefore is not binding on the Council, but it is advisory and clearly states the Council's intent that it should respect that corridor in looking at development and density in that corridor area.

Councilor Calvert said on the General Plan side it states, "No reasonable locations have been provided for certain land uses for which there is a demonstrated need, or the applicant must demonstrate that the requested land use designation will allow for infill development in addition to supporting affordable housing in this portion of the City."

Councilor Calvert said he noted, and is glad Councilor Ortiz corrected the applicant who eliminated the Northwest Quadrant in discussing the plans for affordable housing in Santa Fe. He and the other Councilors have made a solid commitment to affordable housing. The Northwest Quadrant will provide a whole lot more affordable housing than this one will. The Northwest Quadrant will provide better planning and a sustainable development. He is unsure that he agrees with the applicant that this is the only place where this can be done, or that it has to be done here. The reason is that this project is marginal at best for a number of reasons: terrain, drainage, sewer, noise, lights and fumes from the freeway [highway], accessibility and

safety, stability of the hillside, setbacks off 599 and Old Taos Highway, and such. He said this project is a marginal project hiding behind that reasoning, and borders on social injustice to try to put affordable housing in a marginal development such as this one. People living in affordable housing deserve the same housing and environment as everyone else, and he doesn't believe this project provides this.

Councilor Calvert said, "The final thing it says, is the effect of the proposed change in land use will not have significant negative impact on surrounding property. The proposed change in land use must be related to the character of the surrounding area, or a provision must be made to separate the proposed change in use from adjacent property by setback, landscaping or other means." The best judge of the negative impact of this is are the adjacent property owners. He said almost every one of the adjacent neighbors are against this project.

**Councilor Calvert moved, seconded by Councilor Bushee, to deny the General Plan Amendment request.**

**Discussion:** Councilor Chavez said he would like to respond to Councilor Calvert with respect to the challenges of this particular site. He said as undesirable as it may be, it sounds like a lot of other sites for which the Council has approved development, not on this end of town, but certainly along Airport Road and in the Southwest sector. Infill and affordable housing will always have these challenges. He said it is good to mention the Northwest Quadrant. However, it will be two years down the road for the Northwest Quadrant to come on line. He asked if the Northwest Quadrant is going to be the Tierra Contenta of the East side. He said we want to spread the affordable units throughout the City as much as possible. He said we need to act on this. He doesn't want Santa Fe to become another Aspen where at least 80% of the work force commutes back and forth to work. We don't need that.

Councilor Chavez said the Code and the criteria referenced are all important, but as the applicant stated, they will do as much as they can to mitigate those impacts, and suggested there could be a second access to alleviate some of those problems. At this point, he said he cannot support the motion.

Councilor Calvert said he isn't waiting just on the Northwest Quadrant, pointing out that he and Councilor Bushee have sponsored a resolution for affordable housing development on a City-owned lot on Alto, which is also near downtown. He said four affordable units will be provided there on one lot, but we are going to use the whole acreage here to get five affordable units. He believes this is a bad project and a bad development, with only one more unit here than on Alto. He doesn't believe this is sufficient justification for a bad project.

Councilor Heldmeyer said with regard to infill, the General Plan has some conflicting ideas. She said the clearest part of the General Plan is the map which we are talking about amending. The General Plan does say that infill has to be appropriate, and "appropriate" can cover a variety of different situations. She said in this case, the terrain seems to be the biggest issue, noting that buildings and roads are going to be on 20-30% slopes. The Applicant says that our current City Engineer said that they could do this without a variance, but the staff report

says it may be possible not to have variances, but that no final evaluation can be made without detailed information.

Councilor Heldmeyer said seventeen years ago she bid on a house across the street from this site, and it wasn't a million dollar house and still isn't. The terrain in the subject site is very steep, and to get this level of density is very difficult. She asked if it is it admirable that the applicant wants to put in affordable housing, but it is not so admirable when it is required by law, and it certainly wasn't the first thing they had in mind. She read a portion of the letter which wasn't read into the record from Mr. Young [Exhibit "6"] which says he wanted to build condos "similar to the ones I live in, but more plush." She said a decision was made, which she is sure is a very pragmatic and reasonable decision, that It would be easier to get this development on this land if it were sold as affordable housing. She said it seems to her, for all the reasons mentioned by Councilor Calvert, this just isn't appropriate on this piece of land. She wishes it were, but there are just too many problems.

Councilor Wurzbarger said she is confused about these assessments. She understood from the earlier staff comments, as well as testimony this evening, as well as what is provided by the Applicant, that the slope analysis of the property is in compliance with City standards. She asked Mr. Smith to respond.

Mr. Smith said the staff memo is based on a preliminary analysis of a conceptual plan, so staff is uncertain as to whether compliance will or will not occur. Staff doesn't have enough information to make a final determination. The conceptual plan appears to show that it would be possible not to have variances, but staff hasn't done a complete analysis because we don't have a complete plan.

Councilor Wurzbarger asked if it isn't true that at this point in the process we don't do complete analyses. This is being presented as if it is some sort of aberration, and a negative comment, rather than we don't know yet because that's where we are in the process.

Mr. Smith said Chapter 14 rezoning criteria do not require a grading plan at this stage of the process. The Council has at times required this level of detail in other cases, but it is not a minimum requirement of the Code.

Councilor Wurzbarger said the current noise analysis shows that noise would not be a problem, but that has to be determined once the final preliminary plan is developed.

Mr. Smith said the City does not have mandatory noise regulations, and has advisory noise standards in the General Plan. Again, staff does not have a complete and detailed noise study upon which to base a judgment.

Councilor Trujillo said before he was elected to this Council, he remembers hearing this Council always saying it was going to make affordable housing a top priority, and it was a top priority of every Councilor who ran for office. He said this is one of the reasons he was elected, to work for affordable housing for the people who are leaving Santa Fe. He wants to see his children grow up in Santa Fe, and as things are going, that might not happen.

Councilor Trujillo referred to the article in The Albuquerque Journal, "Santa Fe's Quest to get more locals into their own homes. The study provided confirmation of what most people already know – the more expensive the house, the more likely it is that someone not from Santa Fe will own it." He said people are leaving Santa Fe to buy homes outside the area, and moving to Rio Rancho, Santa Fe and Espanola. He is tired of giving Martin Chavez revenue from the City of Santa Fe and wants to keep that revenue here. This one way to put affordable housing on the East side where there is none, commenting that currently all of the affordable housing is going to Districts #3 and #4. He doesn't hear people complain when it is coming into his District, into Councilor Dominguez's District. He said it seems that it only comes up when it goes into this side of town. He thinks it's wrong.

Councilor Trujillo said this evening he heard a lot that it is because of race, but this isn't it, and he doesn't want it to be about race. We are all Santa Feños no matter how long we have been here. He said there are many local natives, but he doesn't want this to turn into that. He does want affordable housing on this side of town, and he cannot support this motion.

Councilor Dominguez thanked everyone for speaking tonight. He quoted from the staff report, "Staff analysis of the conceptual plan shows that it may be possible to achieve a density of 10-12 units per acre without terrain management variances.." He said the General Plan is a concept, it is very conceptual. He also pointed out that staff's report says a development plan is not required. He said a development plan addresses both ingress and egress, terrain issues and utility issues, and pointed out that we aren't quite there yet.

Councilor Dominguez said Councilor Calvert is correct that this is an emotional issue for many people. He said when we do not take the time as Councilors or as a community to address affordable housing along Airport Road that has major traffic concerns, we do not invest that type of emotion as a Governing Body for these kinds of issues. He said he gets emotional because this community is segregated, and anybody who says it is not, is very mistaken.

Councilor Dominguez said the General Plan has been discussed a lot this evening. One of the Plan's themes is affordable housing, and says "in black and white," that the Governing Body has the right to prioritize these things, in either specific cases as this one, or as a matter of general policy. The general policy is that Councilors who campaign on affordable housing have addressed that statement in the General Plan through those types of issues. He said affordable housing is very important to him, because this is an opportunity for his children, and his nieces and nephews, to live in this community in general, and it would be wonderful for them and the next generation to live on the north side of town. He said we can't do enough to provide that opportunity in Santa Fe, and this is just one little, tiny opportunity to provide that.

Councilor Dominguez said, with regard to affordable housing, 1-7.1 of the General Plan provides, "Opportunities to actively participate in the creation of affordable housing." We are doing this today. Further, it provides, "Opportunities are provided for housing for all income segments of the population in all areas of the city, while restricting the supply of large lot housing."

Councilor Dominguez said in terms of the General Plan and the motion, he doesn't believe the motion is consistent with his perception or analysis of the General Plan. He is a



cartographer, and part of his job is to look at terrain, and he creates the maps which identify slopes and all kinds of terrain. From his experience as a professional, he said when you go to the site, looks can be deceiving, and when you analyze the topography, it is not what it seems to be. He said it would be difficult for him, with all due respect to Councilor Calvert, to support the motion.

Councilor Bushee said she rarely agrees with Karl Sommer, but she agreed with almost everything he said regarding this site, and what this hearing is supposed to be about. She said Mayor Jaramillo did initiate a lot in terms of affordable housing, and that was the beginning of getting the policies in place. However, one of the things which always was overlooked was the Northwest Quadrant, noting there was a local effort not to touch that property. It was not discussed during the review of the General Plan. She said the emotional battle this evening isn't a panacea to develop the Northwest Quadrant, but many people already in established neighborhoods which once were affordable are very concerned about the impact of that development on their neighborhoods. She said only 200 acres out of 2,000 will be developed, and the City chose not to develop the more difficult pieces of land because it is too expensive.

Councilor Bushee said the proposal would put 19 units on the developable portion of the property. It is easy to use affordable housing as the "carrot." She said the applicant will generate at least \$10 million on the units which aren't affordable, so this isn't about largess, but it is a business man's decision with his partner. She said she isn't saying that we don't need affordability where it works, but this site isn't suitable for 19 units, noting she has visited this site. She said this will force the five affordable units right against the highway which she doesn't believe is suitable. She is aiming to develop the Northwest Quadrant, and more affordable housing. She asked Ms. Jenkins why the Applicant didn't go for a PUD on this project, so we would have the specifics about how to fit everything on this site. She pointed out that the development plan still has to be approved, and this vote tonight just opens the door for discussion.

Ms. Jenkins said that decision was made prior to her involvement in the project.

Mr. Young said he is unfamiliar with the PUD process, and they followed staff's recommendation.

Councilor Bushee said throughout the minutes, staff thought it would be a good idea to do a PUD so you would have the specifics for tonight.

Ms. Jenkins said it was an option which was considered. She said they went beyond doing a conceptual site plan, and did a conceptual grading and drainage plan, and tried to provide more detail than what would typically be required for a straight rezone application. The option had a variety of things played into that, but they worked to provide staff with as much detail as possible before developing floor plans, elevations, and the highly developed submittal of a preliminary development plan. They chose to not proceed with that level of detail at this point.

Mayor Coss said he is happy to hear Councilor Trujillo say that we are all Santa Feenos. We do need more Affordable housing in our City. He said there are more than 400



affordable housing units in the pipeline now because of this Governing Body and its policy. We have a transfer tax on the table to support Affordable housing, and the development of the Northwest Quadrant, which demonstrates our support for affordable housing all across Santa Fe. However, he agrees this is a poor piece of land and is concerned about building 12 non-affordable units to get 5 affordable units. It is unfortunate this has been made an issue of affordability, when the majority of the units will not be affordable. He might feel differently if he could see the development plan. He said every time staff looks at it, they say don't do it. He keeps seeing 19 homes by a freeway, which is an environmental justice issue in building housing for working class families next to a highway interchange. He said if we do this, we will be throwing out all of the rest of the rules and the rest of the planning, and all of the conditions which we looked at in the General Plan.

**The motion failed to pass on the following roll call vote:**

**For: Councilor Heldmeyer, Councilor Bushee and Councilor Calvert.**

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

**Councilor Trujillo moved, seconded by Councilor Dominguez, to adopt Resolution No. 2007- 42, approving the general plan amendment.**

**Discussion:** Councilor Calvert said he doesn't want to make this personal, but, with all due respect, he asked Councilors Trujillo and Dominguez, who said they would like affordable housing for their children, if they would like their children to have their house on this lot.

Councilor Trujillo said it is just knowing his children are in Santa Fe, and knowing when they are grown and have children, that I can have the same opportunity my mother had to see her grandchildren. He said many of his parents friends' children are living in California and Albuquerque.

Councilor Dominguez said, with all due respect Councilor Calvert, this is probably the sentiment of many, many, many indigenous people in this community who feel they are being pushed out and being forced to live next to a highway on Airport Road, which essentially is a highway.

Councilor Ortiz said he, like some of the other Councilors, is looking forward to a development plan, because there are issues which need to be addressed satisfactorily for the residents. He said we had this discussion about six months ago on the homewise project on an annexation, with 65 units with only one access, up against the freeway for which we have a proposed light rail route and light rail stop. At that time those same comments were made about noise and access, and it was passed, but he voted against it. He said he took Mr. Walker and Ms. Jenkins to task about the issues of noise and noise abatement.

Councilor Ortiz said he has a constituent who consistently tells him, and he has come to believe this, that when he is doing his job as our Councilor, he won't see the crowds when he is

representing his part of town, Districts #4 and #3. He said the crowds come out from the East and North sides, not because that they have more passion, intelligence or salient points to make, it is because they have more time and/or resources which allow them to come here and present before the Council. He said his constituents on his side of town are busy with their lives, their children, their families and jobs. He said he has seen this.

Councilor Ortiz noted there is an H-Board appeal next, and we always get a packed room when it results in the north or east side of town. However, when it is the south side of town, and we are talking about 65 units or 200 rental units in an arroyo, we hear from the applicants and perhaps one or two people. The Council passes it as if the number of heads sometimes dictate the kinds of positions we take. He said he lives right against the Interstate, and it is a pain, and will be even worse with the light rail. However, he likes living in his home town and the ability to live in his home town.

Councilor Ortiz said he knows this site. When his grandfather built his house in 1972, we used to walk his dogs to the site and back. It was here before Los Lovatos and Calle Loma Norte were developed. This site has always been like the rest of the sites which have been filled in, and he trusts this will be filled in. He said because of the laws, and the positions some of the Councilors have taken, a percentage of those have to be affordable. This applicant says there will be more affordable units than required by law.

Councilor Ortiz said, with regard to the point on the General Plan Amendment, that, first, we have had enough time to see that it is a living document. Secondly, he has seen that the hodge podge which we created in 1999 was really just that. It was a marathon session, where some parcels were considered, debated, thoroughly thought out, and some parcels were left on the recommendation of a particular Councilor, or staff, or weren't thought about, or maybe were mistakes.

Councilor Ortiz referenced a parcel next to Zia Road which was designated as open space and park land, and asked how a property owner with this designation in the General Plan could do anything with that property, and we debated that. We had to change the General Plan because it was acknowledged by staff that that parcel "slipped through the cracks." He said perhaps this parcel may have slipped through the cracks. He said over the past years we have seen this City continue to put affordable units on one side of town and not another. When an applicant comes forward, that policy of integrated, affordable housing throughout the City is the kind of rationale we used to change the General Plan on the west and south sides, and he believes we can use that as justification to change the General Plan on the north side. This is the reason he supports this motion.

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

**For: Councilor Dominguez, Councilor Ortiz, Councilor Trujillo, Councilor Wurzbarger and Councilor Chavez.**

**Against: Councilor Heldmeyer, Councilor Bushee and Councilor Calvert.**

**EXPLAINING HER VOTE:** Councilor Wurzbarger said, with regard to the General Plan, having been on the Council for five years, this is the first time she has ever had neighbors come in and try to keep the General Plan the way it is. We are always on the other side, where we are asked to change the General Plan.

- 4) CONSIDERATION OF BILL NO. 2007-20; ADOPTION OF ORDINANCE NO. 2007- 13. 1034 & 1038 OLD TAOS HIGHWAY GENERAL PLAN AMENDMENT. DERRICK ARCHULETA, AGENT FOR SAFE PROPERTIES, LLC/KEVIN MCKOWN, REQUEST REZONING FROM R-2 (RESIDENTIAL, 2 DWELLING UNITS PER ACRE) to RM-10 (MULTIFAMILY RESIDENTIAL – 10 DWELLING UNITS PER ACRE) FOR ± 2.179 ACRES AT 1034 AND 1038 OLD TAOS HIGHWAY. (GREG SMITH) (Postponed at January 31, 2007 City Council Meeting)**

***Items #3 and #4 were combined for purposes of presentation, public hearing and discussion, but were voted upon separately.***

**Councilor Trujillo moved, seconded by Councilor Chavez, to adopt Ordinance No. 2007-13, approving the rezoning from R-2 to RM-10.**

**Discussion:** Councilor Heldmeyer noted that the City is not permitted by law to impose conditions on General Plan amendments, but can impose conditions on rezonings, because rezoning is a discretionary matter for the Council. She said a lot of claims were made this evening, not all by the Applicant, noting the Applicant isn't responsible for what other people say. She asked the Applicant or the Applicant's representatives what they would consider as appropriate conditions of approval.

Councilor Heldmeyer asked if the Applicant will agree not to ask for terrain management variances.

Ms. Jenkins said, "Yes."

Councilor Heldmeyer asked if the Applicant will agree not to make the units which are the closest to the freeway be affordable units.

Ms. Jenkins said, by ordinance, they are required to distribute the units throughout the project, so the units cannot be lumped together, so she will agree to a condition of approval that the Applicant has to comply with the Santa Fe Homes Program, and the layout and exactly where the affordable units are located, are subject to approval by the Office of Affordable Housing.

Councilor Heldmeyer asked if she would agree to make the 5 affordable units – 5 on the conceptual plan – somewhere other than right up against the freeway.

Ms. Jenkins said, after conferring with the Applicant, "Right now, we would prefer not to

have a condition of approval that says none of those units will be affordable. They will be distributed evenly and equitably throughout the project, in accordance with the Ordinance, so that would be our preference.

Councilor Heldmeyer said, "So that would be a no."

Ms. Jenkins said, "That would be a no."

Councilor Heldmeyer said there was a lot of talk that these people would be locals, neighbors, citizens and such, which isn't constitutional to hold you to any of that. She asked if the Applicant would agree to include in the covenants or CCI's, depending on the setup, not to have any short term rentals.

Ms. Jenkins said, "Again, your ordinance, the City's ordinance already says that is prohibited, so we would require, in our restrictive covenants that everybody who lives in that neighborhood is required to comply with all City ordinances."

Councilor Heldmeyer said, "No. I'm asking you specifically, will you agree that these will not be short term rentals, that these will be people living in a neighborhood. That's the tail that I can hang it on."

Ms. Jenkins said, "So, yes, we will agree that there will not be short term rentals as prohibited by Chapter 14."

Councilor Heldmeyer said no, because Chapter 14 probably is going to change, and it's "Nelly bar the door" in terms of short term rentals. She said we heard accusations this evening that the people who live up there now were part time homeowners, and they were renting out short term.

Ms. Jenkins said those accusations weren't made by the Applicant.

Councilor Heldmeyer said there were a lot of positive comments, some made by the Applicant that this was going to be a neighborhood and people will be living there. She said many developments prevent short term rentals in their covenants. She asked if this is something the Applicant would agree to.

Mr. Campbell said he is unaccustomed to this process of having a straight zone issue and then asking whether conditions can be placed on it. The next step is that this proposal has to go through a development plan process, and he is concerned that this isn't legal.

Councilor Heldmeyer said we do it all the time.

Mr. Campbell said he understands that. He said, with regard to the issue about covenants and the municipality requiring certain covenants, or requiring certain forms of contract, he doesn't believe this is legal.

Councilor Heldmeyer said developers come in a proffer certain covenants and contracts as a way to get approval for what they want to do, so this is what she is asking the applicant.

Mr. Campbell said he understands, and his preference here at 11:30 p.m., is that we aren't in any kind of shape to be negotiating from the podium as to conditions which may exist in a zoning application. He said they do have to come back to the City and its various bodies for development plan approvals.

**Friendly amendment:** Councilor Heldmeyer said, "So that would be a no, so we've gotten two nos and a yes, so I'm asking the maker of the motion if the first yes, which is that they will not ask for any terrain variances, if that can be added as an amendment to your motion." **The amendment was friendly to the maker, the second, and there were no objections by the other members of the Governing Body.**

**Friendly amendment:** Councilor Chavez said the Applicant has indicated she would be open to a secondary access. Ms. Jenkins said this can be easily accomplished, and she would accept that as a condition of approval as well. Councilor Chavez would like to add that as a condition of approval. **The amendment was friendly to the maker, the second, and there were no objections by the other members of the Governing Body.**

Councilor Trujillo said he does not want all five affordable units up against the freeway.

Ms. Jenkins said, "Absolutely not. It would be a violation of good planning. They will absolutely be distributed throughout the neighborhood.

Councilor Dominguez agreed, saying we don't want to be able to identify all of the affordable units by location.

Councilor Heldmeyer said she has been asked to make her two suggestions for amendments by motion.

**Friendly amendment:** Councilor Heldmeyer would like to require, through covenants or other legal documents attached to this development, that no short term rentals will be permitted. **The amendment was friendly to the maker and second, but was not friendly to Councilor Wurzburger.**

Councilor Wurzburger said there is an inference here that the only people who are doing short term rentals are those who don't live in the units, and we are working on a process to redefine or not redefine that. She agrees that the people should live there and own the homes, and certainly the affordable units. However, one of the proposals is that you have it. She believes it is important that the people purchasing property obey the laws of the City.

**Councilor Heldmeyer, moved, seconded by Councilor Trujillo, to amend the motion to provide that, through covenants or other legal documents attached to this development, no short term rentals be permitted.**

**Discussion:** Councilor Chavez said if language is structured in the covenants, the City is unable to enforce the covenants and the only way they can be enforced is through the Association, so it is only as good as the Association.

Councilor Heldmeyer agreed that it is an imperfect solution. She said short of doing bed check, it is a way of trying to put into law, what the applicants say they want to do.

Councilor Dominguez said what is more important to him is that these people are going to purchase affordable units, and there are laws in place that this will happen. He is reluctant to support something which is being discussed as we speak. If the ordinance is changed, we can have a discussion at that now. He can't support the amendment because it is making rules as we go.

Councilor Wurzbarger said if this Council passes a law saying you can rent your house 4-6 times a year, this would mean that those who want to do this. She said these might be the people in affordable housing, who might need the money so they can go away for two weeks. She believes this amendment is discriminatory.

**Restatement of the motion to amend: Councilor Heldmeyer said it is a motion for a condition of approval that through covenants, CCRs or other legal means, that these units are not available for short term rentals.**

**The motion to amend the main motion was approved on the following Roll Call vote:**

**For: Councilor Heldmeyer, Councilor Trujillo, Councilor Bushee, Councilor Calvert and Councilor Chavez.**

**Against: Councilor Ortiz, Councilor Wurzbarger, and Councilor Dominguez.**

**EXPLAINING HIS VOTE:** Councilor Ortiz said he believes the amendment is too broad in terms of the language, and he votes no.

**Councilor Heldmeyer moved that none of the houses along 599 be the affordable units. THE MOTION DIED FOR LACK OF A SECOND.**

Councilor Heldmeyer believes the units may need additional soundproofing work, and if these are the affordable units, that could create a financial hardship.

Mr. Smith said there currently is not a specific condition of approval relative to the added affordability which was represented by the Applicant in the presentation. He said since the development plan is not part of the action, the Council may want to make affordability requirements in terms of percentage of units which may be approved when the development plan goes before the Council.

Ms. Jenkins said there will be two dwellings which will be affordably priced for those

earning up to 200% of the area median income, two dwellings which will be priced affordable to those earning 120% of the area median income, and three affordable homes for low income, and all buyers would be qualified through the Community Housing Trust or Homewise, pursuant to the Santa Fe Homes Program Ordinance. Responding to Councilor Chavez, she said there would be a total of seven units, five of which would be the 30% for the Homes Program and the additional two units for the higher income level.

**Councilor Chavez moved, seconded by Councilor Trujillo, that there will be two dwellings which will be affordably priced for those earning up to 200% of the area median income, two dwellings which will be priced affordable to those earning 120% of the area median income, and three homes for low income, and all of the buyers would be qualified through the Community Housing Trust or Homewise, pursuant to the Santa Fe Homes Program Ordinance, for a total of seven units, five of which would be the 30% for the Homes Program and the additional two units for the higher income level.**

**Friendly amendment:** Councilor Wurzbarger said, "I would like to include the word, as part of your development process, you consider that a minimum, because it is possible, but you could look at your final plan, now that you know you have the possibility of moving forward, and if we could end up with eight units, I would be happier. If we could end up with nine, I would be even happier. Etcetera, Etcetera, Rather than giving a number, I would please like to add the word minimum. **The amendment was friendly to the maker, second and the there were no objections by the other City Councilors.**

Mr. Smith said the numbers of units discussed by the Council and the Applicant, presume a total number of units which might be approved in the development plan. Staff's concern is that the Council is not voting on a minimum number of total units, so any reference in the rezoning to a minimum number of affordable units seems inconsistent to staff.

Councilor Heldmeyer said it might be better to state a percentage, since they agreed to no terrain management variances, she believes there will be fewer than 19 units. Ms. Jenkins said that is possible.

Councilor Chavez said then if we move from a specific number of units, then the percentage would be 40% total with ten percent in addition to that required by the Santa Fe Homes Program would be at the 120% of median income range.

**Restatement of the Motion to amend:** Councilor Chavez moved, seconded by Councilor Trujillo, as a condition of approval, the Applicant will provide a minimum of 10% over and above the 30% which is required by the ordinance, for a total of 40%. The maker, second and other Councilors were in agreement with this restatement of the motion.

**The main motion, as amended, to adopt Ordinance No. 2007-13, to approve the rezoning with conditions, was approved on the following Roll Call vote:**

**For: Councilor Ortiz, Councilor Trujillo, Councilor Wurzbarger, Councilor Chavez, Councilor Dominguez.**

**Against: Councilor Bushee, Councilor Calvert and Councilor Heldmeyer.**

EXPLAINING HER VOTE: Councilor Heldmeyer said she appreciates her colleagues being willing to put conditions of approval on this, because she believes those make the difference between something which works and something which doesn't. However, she also learned when she was on the Planning Commission, that when there are a lot of promises made, and the applicant doesn't pick up on those as conditions of approval, there is often something else going on, so she votes no.

*There was a short break at this time*

- 5) **CASE #H-06-18A AND CASE #H-06-18B. APPEAL OF HISTORIC DESIGN REVIEW BOARD'S DECISION CONCERNING PROPERTY AT 1323 ½ CERRO GORDO ROAD. RANDALL BELL, AGENT FOR CATHERINE ANN MURDY, OWNER, REQUESTS THAT THE GOVERNING BODY RESCIND THE ACTION ON AUGUST 22, 2006 TO REDUCE THE HEIGHT OF A FENCE FROM 11' TO 6' ON A NON-CONTRIBUTING PROPERTY IN THE DOWNTOWN & EASTSIDE HISTORIC DISTRICT. (DAVID RASCH)**

Memorandum dated May 9, 2007, with attachments, regarding Case #H-06-18(A) and (B), to Mayor Coss and City Councilors, from Davis Rasch, Supervising Planner in Historic Preservation, is incorporated herewith to these minutes as Exhibit "11."

"Appeal of Ann Murdy to City Council, Case H-06-18-A and B," dated May 9, 2007, submitted for the record by Ann Murdy, is incorporated herewith to these minutes as Exhibit "12."

A copy of a list of Code references relevant to this case, distributed by David Rasch, is incorporated herewith to these minutes as Exhibit "13."

The staff report was presented by David Rasch, which is contained in Exhibit "11." Mr. Rasch noted the document he distributed to the Councilors which contains the code citations [Exhibit "13"].

**Staff Recommendation:** Staff recommends denial of this appeal which requests that a fence be allowed to exceed the staff administrative approval and the issued permit in height. An exception above the maximum allowable height of 6' from the HDRB and a variance to the 6' maximum building code from the Board of Adjustment has not been granted.

### **Public Hearing**

**Randall Bell, 1225G South St. Francis Drive, representing the Appellant, was sworn.** Mr. Bell distributed a packet of information to the Governing Body [Exhibit "13"]. Mr.



Bell said the packet contains primarily photographs for reference. He said an important set of photographs are in the packet which were taken by Ms. Presser, a professional photographer, to measure the fence from one end to the other to determine the actual height. He said there is talk about 11 ft, but there is no point on the fence where the height is 11 ft. The average height is 9 ft. 7in, and the permit was for 9 ft. 6in. He suggested that the one inch is a de minimus variation, and the result of the requirement to have a staggered height.

Mr. Bell said each of the measurements are shown in the photograph by the tape and exactly where it is, commenting this can be verified by anyone. He is not aware of any evidence the City has to justify this claim that there is 11 ft. there.

Mr. Bell said this is an unfortunate situation where two neighbors are at odds, but it is how things evolved. Unfortunately, in this case, good fences haven't made good neighbors

Mr. Bell said Ms. Murdy has lived at this house for four years, it is her only residence where she lives full time. The adjacent house at 1321 Cerro Gordo, is owned by her neighbors Ms. Abrams and Mr. Benn, who live in New York. The house is used for short term rentals, and they are there very rarely. The reason Ms. Murdy built the fence was for privacy and security. She is below those neighbors and they are looking straight down on her bedroom windows and her back yard. The house was rented to a move crew who were having late night rap parties and shining lights down into her yard, and it was a very uncomfortable situation. She determined she would go to the City and do the right thing, which is to apply for a permit and meet with staff. She met with staff on multiple occasions. She obtained her permit. It is ironic that Ms. Abrams and Mr. Benn are so aggressive about attempting to enforce an alleged violation, when they have at least eight violations on their property where they have done things the H-Board told them not to do. They built a wall and fence without a permit, were red tagged over a year ago, and haven't yet solved that.

Mr. Bell said he added a copy of a letter dated January 12, 2006, from his client to David Rasch and Marissa Barrett, staff members in Historic Presentation, making very clear her intention. He said staff did not include the appeal of Diane Quarles letter in the packet which was filed by Ken Cassutt on behalf of his clients, and doesn't know why that was omitted. He said when Ms. Quarles issued her letter, his client had no problem with it, and was happy to comply. Ms. Murdy filed her appeal on the required date when she was informed that her neighbors were appealing Dianne Quarles's decision in order to protect her position and her permit.

Mr. Bell said the gist of the Abrams/Benn appeal was that the maximum height should be measured from Ms. Murdy's yard, rather than the top of the retaining wall. Everybody admits that the retaining wall is clearly on the Abrams/Benn property and not on Ms. Murdy's property.

Mr. Bell said the other part of the appeal is that the fence rises approximately 11 ft., which, from the photographs, you can verify is not accurate. They argue further that the height limit set forth in Chapter 14 is six feet. The confusion with staff, with regard to the six feet versus the nine feet, comes about is, partly, because staff never went out to the property, despite being invited, noting it is not like the rough sketch presented by Mr. Rasch. He said

the retaining wall on the Abrams property is fairly straight up. There is a gap and there is air there, but there is no question that we have two different grades meeting at the boundary between these two properties, which is part of the confusion.

Mr. Bell said staff's synopsis is misleading. He has been advised by staff that they are "required" to recommend denial of appeals as a matter of course. To his knowledge, there is no ordinance language or written public policy setting forth this policy, noting Council frequently has overruled staff recommendations. The staff further says that the appeal requests that a fence be allowed to exceed staff's administrative approval, and the issued permit in height. This is mischaracterized. Ms. Murdy's goal is to have her permit upheld, which clearly granted her the right to build a 9 ft. 6 in. fence.

Mr. Bell said in the Background Summary of staff, in paragraph two, staff says he, "Understood the fence will be placed on top of an existing 3 ft. 6 in. retaining wall, so it would be 6 feet high as measured from the grade." He said staff's understanding "flies in the fact" of all written submittals by Ms. Murdy, and asked the Council to note her letter of January 12, 2006, clearly detailing that the fence would be built on her property. In fact, she can't build a fence on her neighbors' property, and the neighbors would have to be one of the applicants if this were the case.

Mr. Bell said Ms. Murdy was told by Randy Thompson in a meeting that as long as the fence wasn't 6 ft. higher than the grade on the Abrams/Benn property, that there was no problem, and this, in fact, is what is there. This fence is the height that if her neighbors built the fence, it would be allowed. It is 6 ft. above their retaining wall.

Mr. Bell said Ms. Murdy was advised by Randy Thompson and Dan Esquibel that the issue of different grades had arisen previously, and they had previously interpreted the higher grade as they did in this case.

Mr. Bell said staff also requested that the Applicant acquire an approval of the project from the adjacent property owner before an administrative approval could be granted. This is a false statement. He said during the fourteen months which have elapsed since Ms. Murdy applied for her permit, this position has never been raised or mentioned until this report. He said Mr. Pressler, who attended a number of these meetings, will verify that never happened. Furthermore, if this was the case, why was the administrative approval issued.

Mr. Bell said in Paragraph 3 of the Staff Synopsis, Mr. Rasch states that he, "granted approval for a 6 ft. high coyote fence, as measured where the fence attaches to the ground." In fact, his administrative approval says 6 ft. high from the highest grade. He said everybody on staff was interpreting highest grade to be that height of the originating wall. He said it seems he also believed the highest grade to be the high side of the boundary line of the Abrams/Benn side.

Mr. Bell said Ms. Murdy submitted her application for the permit which clearly shows a 9 ft. 6 in. fence to be built from her side. He said all you have to do is look at the diagram she submitted which is in the Council packet attached to her permit application. When she submitted this after several meetings with Randy Thompson and asking if she needed a

variance and exception, she was told "no, no, no you don't." Because she wanted to be explicitly clear about what she was going to do, she made handwritten notes, "On my side [1323 ½ Cerro Gordo Road] coyote fence will be 9 ft. 6 in. On my neighbor's side, the fence will be 6 ft. tall, according to Ordinance 14-8.5." This citation was given to her by Dan Esquibel.

Mr. Bell said Ms. Murdy had requested a letter indicating she didn't have to seek a variance, but Mr. Esquibel wouldn't give that to her. She then asked for the ordinance which applies which allows her to do this, and he told her it is 14-8.5. He said 14-8.5 is subject to interpretation, but Ms. Murdy relied in good faith on City staff to make that interpretation. Mr. Bell said 14-8.5(B)(1) cited by Mr. Rash provides, "The height of the wall shall be measured from the side where the ground elevation is the highest." In this case, the interpretation was that the highest was the Benn/Abrams side which was 3½ ft. higher on the retaining wall. The rest of the drawn diagram clearly shows that the height of her fence will be 9 ft. 6 in.

Mr. Bell said for staff to say they were confused about her intentions is inconceivable. If they really believed the fence was going to be built on the neighbors' property, they would have had to have, at a minimum, some sort of a legal contract, an easement, and participation from the neighbors, but that didn't happen. He said Mr. Rasch and the other staff members were shown photographs of the site, invited to come and to examine it, but chose to issue the building permit without doing so.

Mr. Bell said there is some negligence on the part of staff and Ms. Murdy is being penalized for assiduously trying to work with the permit process, which is something the City would like to encourage.

Mr. Bell said staff issued the permit on February 24, 2006, and the time for appealing the permit expired 30 days later. The Abrams did not appeal the permit, but should if they had an objection. Instead, they made a complaint to Historic staff which was referred to Diane Quarles, through her issuance of the letter, they felt they had some "bootstrap" thing to appeal, and they then appealed Ms. Quarles' letter.

Ms. Murdy spent a lot of money because she had the permit, and built the fence as designed and approved, with an apparent excess of perhaps one inch, which easily can be cured. When Ms. Quarles issued her letter she didn't say Ms. Murdy couldn't build a 9 ft. 6 in. Fence, but she validated the 9 ft. 6 in. fence, saying the information she had from Gary Moquino was that it was higher than that, somewhere around 11 ft. Gary Moquino went out and measured the fence and determined, in his opinion, that it was higher than 9' 6". He issued the Notice of Violation, and on April 24, 2006, it was referred to Diane Quarles then Director of Planning. Ms. Quarles issued her letter on July 6, 2006, claiming that in some areas the fence is 10 ft. 10 in. or 11 ft. from grade.

Mayor Coss asked Mr. Bell to wrap up his presentation.

Mr. Bell said the Abrams/Benns appealed Ms. Quarles' letter, which resulted in Ms. Murdy filing an appeal of the action to preserve her rights, which raises several legal questions. Ms. Quarles letter does not overrule the permit, but merely states the fence should not exceed

9 ft. 6 in. His client never disputed that she would not live by Ms. Quarles' determination, with the exception that the height is not as stated.

Mr. Bell contends the H-Board exceeded its authority when it chose to treat the matter as if it were a new application, and should have dealt only with the limited question raised in Ms. Quarles' letter, which was whether the fence exceeded by some inches the approval. The H-Board not being attorneys, nor seeking advice from the City Attorney, chose to view the application as a new application for a fence, deferred to the standard 6 ft. height limitation, completely ignoring the issue of the differential and grade heights at the boundary, as well as completely ignoring the other legal issues of its jurisdiction over this action in the face of an unappealed, and issued building permit.

Mr. Bell said the H-Board was not in the position to rule on the legal issue of Ms. Murdy's vested rights. She obtained a legal permit and built, in reliance on that permit. Mr. Cassutt, counsel for Abrams/Benn, in his memorandum to the City Attorney's office, primarily argues that the permit was invalid because it was based on inaccurate information to obtain the permit and a falsification. He said Mr. Cassutt basically is saying she defrauded staff and her permit is void because of that. This simply isn't true, is not what is shown in the record.

Mr. Bell said there will be brief testimony from Mr. Pressler who was present at several of those meetings with staff.

Mr. Bell said Mr. Cassutt's memorandum says the vested rights would not arise if it wasn't constructed in accordance with the approved permit. He said these arguments are inaccurate, and any differentiation of height is de minimus.

Mr. Bell said there is no question that Ms. Murdy made every effort, and did submit clear evidence in writing of exactly what her intentions were, the conditions on the ground, and represented the relationship between the properties grades accurately. None of the involved staff bothered to do a site visit. If they were confused, the confusion is based on their failure to review the written submissions carefully.

Mr. Bell said the Governing Body has the power to make this wrong right, by affirming Ms. Murdy's permit. Ms. Murdy made extraordinary efforts to play by the rules in a City where many do what they want until red tagged. Punishing a compliant applicant, will only send the message to the community that they should stay away from City Hall when they want to build. He asked to reserve the right of rebuttal after the other side speaks.

**Jack Pressler was sworn.** Mr. Pressler has been a full time resident on the west side of town for 28 years. Ann Murdy has been his girlfriend for two years. He is very familiar with this case. He attended three meetings with her. On the day the violation was issued, he and Ms. Murdy met with David Rasch to see what was going on. She did everything she was supposed to do, followed every guideline, and was told by staff she could build this fence the way she wanted to. She built it and now there's a problem. She asked Mr. Rasch what triggered the violation, and he told her that the City Attorney received a letter complaining about the fence. She asked who wrote the letter and its contents. Mr. Rasch told her he had not

seen the letter. Mr. Rasch told us that it was his understanding that Ms. Murdy was going to build her fence on top of the neighbor's retaining wall.

Mr. Pressler said Ms. Murdy said she never planned to do that because it didn't belong to her. He asked how you can build a fence on top of the neighbor's wall without their permission. She had to hire an attorney the year before this happened, to affirm that she did not own this part of that wall, so how could she build a fence on a wall she doesn't own. Mr. Rash told her he would get back with her. Two months later, Ms. Murdy received a copy of the letter which initiated the action which was taken, and on it, it said Mr. Rasch had received a copy of it. It was not addressed to the City Attorney, but to Gary Moquino who was the person who issued the violation.

Mr. Pressler said it then began to get a little fuzzy. A month later, she met with Randy Thompson to discuss the alleged violation. He said Randy Thompson and Randy Esquibel told her she could build the fence to be higher on her side because it would have to accommodate the neighbor's height of their property. To work as a fence, you build it at 6 ft. if it is at level ground it will work for both people. It has to be higher on "that" side to work as a fence. He said this seems to be a difficult concept for people to understand.

Mr. Pressler said Ms. Murdy asked him if at any time did she ever say anything about building the fence on top of the neighbor's retaining wall, and "he" said no you never said that. About a month later, Randy Thompson wrote a letter to Carlos Martinez contradicting what he told Ms. Murdy, in fact stating it was his impression that this is what she was going to do. He said they would tell her one thing, and then tell others something else.

Mr. Pressler said when Mr. Thompson came out to inspect the fence, he declared it was six feet tall for most of its length. There was a little problem in that the fence covers up a window and a little patio. She built it for privacy and security. Mr. Thompson said it was a little higher at the window, but the ground elevation was lower there. After more discussion and measurement, he asked Ms. Murdy if she would be willing to lower the fence by 8 in., as a compromise, to settle this. He said Ms. Murdy said she would do this to get the matter settled. However, that never went anywhere with the neighbors.

Mr. Pressler said he was in contact with Ms. Murdy while she worked with Planning & Land Use and the H-Board, and was completely honest, disclosing all the facts to the staff. For her honesty and diligence, she was punished and accused of doing something wrong, and the staff really didn't want to deal with her.

Mayor Coss asked Mr. Pressler to wrap up his presentation.

Mr. Pressler said if this continues, it sends a very bad message to people in Santa Fe. Every building permit issue could be declared invalid just because staff makes something up about some part of it like they did with Ms. Murdy. The Council can settle this case by giving

Ms. Murdy a decision stating that her building permit stands and so does her fence. He said he hopes the Council agrees with him that this is the right thing to do.

**Kenneth Cassutt, 530B Harkle Road, attorney, was sworn.** Mr. Cassutt referred to two surveys in the packet. One is a survey attached to her application, and the other is a survey done by Allen Curtis, which is attached to the Brief he filed and should be part of the packet.

Mr. Cassutt said everyone agrees that the maximum height of the fence is six feet, and it is just a question of where it is measured from. If the boundary line of the property is at the top of the retaining wall, then it can be measured from the top of the retaining wall. He believes the ordinance is clear that you can measure from the high side of the boundary line. However, if the boundary line is down below, at the bottom of the retaining wall, that is where it has to be measured.

Mr. Cassutt said the survey provided by Allen Curtis clearly shows that the retaining wall is on his clients' property, which means the boundary line is at the bottom in Ms. Murdy's yard, and where the six feet needs to be measured. He doesn't think Mr. Bell has contested that. However, we are "hung up" on what the staff did or didn't do in its evaluation.

Mr. Cassutt said the survey attached to Ms. Murdy's application was performed by Phil Weigle, an excellent surveyor, but he don't see that it was recorded anywhere. You can see on the south boundary line, it shows the retaining wall straddling the boundary line. Staff is looking at the retaining wall as being the boundary line, and the rule which provides that the 6 ft. is measured from the upper property, rather than the lower wall, and this is where the confusion arose. He said Ms. Murdy knew the retaining wall did not form the boundary line. A repair the year before brought a letter to his clients from Ms. Murdy, saying it was on their property, and that she would not pay a dime for the repair. His clients spent more than \$20,000 repairing the retaining wall, and Ms. Murdy didn't pay anything, and this was right because it isn't on her property. He doesn't know what happened here but it is clear the fence can go up six feet from the bottom.

**Nathan Benn, 1321 Cerro Gordo was sworn.** He, his wife and son reside at 1321 Cerro Gordo. He is in attendance to the Council to reject Ms. Murdy's appeal. The first two rooms of his house were built by the Sanchez family in the 19<sup>th</sup> century, and the first property on Cerro Gordo. He described the view from this address. He and his wife have been full time, legal residents, having owned a home in Santa Fe for 13 years. Since their son registered in school back east, they live in Santa Fe about four months a year now. They bought the house five years ago, because they like the neighborhood, it is an historic, won an award from the City for the quality of the restoration. It is the sixth historic house her has owned in his 35 years as an adult. He said he and his wife are caretakers of this house, and it really belongs to the people of Santa Fe. It was built 150 years ago, and when they are gone, someone else will live in this house. How they leave it is important to the history of Santa Fe.

Mr. Benn said when they bought the house, they had the beautiful view the Sanchez family left there. The retaining wall is 100 years old or older. The property was subdivided 12 years ago on the north side, they could have put the boundary anywhere they wanted, and chose not to put it at the retaining wall, and put it 2-3 feet north of the retaining wall. He said

his property contains the retaining wall and is the sliver of land at the lower elevation. He said their elevation begins at the base of the retaining wall. He said when they bought the house, they could sit in their living room and look at Cerro Gordo and trees, and could sit in other places and see trees. Now, he looks out and sees a stockade wall. He said to call this a coyote fence is a slander on the word "coyote fence." A coyote fence is a "sweet little thing" of six feet of small latillas. This is built with 4-5 inch diameter old wood, some of it with graffiti on it, and an ugly steel infrastructure. This is a fence you would build for cattle or to irritate your neighbors.

Mr. Benn said he will now address some of the slanderous things Mr. Bell said about us.

Mayor Coss asked Mr. Benn to keep his remarks on the appeal.

Mr. Benn said we have owned this property for five years and have had two renters: one for six months and one for four months. The six month rental was to a woman while her house was being remodeled near them. The other was for four months for an elite actress in an astronaut film, who lived alone and didn't have parties.

Mr. Benn said it was said we look down into Ms. Murdy's bedroom, but her bedroom is on the other side of the house, stating, "I don't know where her bedroom is, but you can barely see our house, as the Historic Board saw when they came out to our property, you can barely see her house from our property, because it is a very heavily wooded property." He said they have bedrooms which are very visible, and are right on the road. They put curtains up, not stockade walls.

Mr. Benn said, with regard to Mr. Bell saying we have eight violations, "Mr. Rasch sent us a letter telling us that if we didn't accede to the fence as it is, he would out us, bust us, harass us, for these eight violations. So, instead of acceding to this intimidation, I forwarded the letter to Mr. Rasch and Mr. Moquino and invited them to visit and to see the supposed violations. And Mr. Rasch did, and I think Mr. Rasch could speak for himself, but I would say that Mr. Bell's alleged eight violations are in his imagination and in his clients' imagination."

Mr. Benn said Mr. Bell brought up the red tag. He said during some construction they did three years ago, Ms. Murdy filed a complaint, "knowingly it was incorrect that we were encroaching on our property, our construction was red tagged. It took us six weeks to have the red tag lifted and cost \$5,000 in loss of use of our property for two months. The result of the survey and engineer study that was done as a result of the red tag was that, in fact, we were not encroaching, the encroachment was in Ms. Murdy's brain and not in reality, and that as soon as the engineering drawing was submitted, the red tag was lifted, and that's the story of the red tag." He thanked the Council for their time.

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**Councilor Ortiz moved, seconded by Councilor Heldmeyer, to suspend the rules. The motion was approved on a voice vote with Councilors Bushee, Calvert, Chavez, Dominguez, Heldmeyer, Ortiz, Trujillo and Wurzbarger voting for the motion and none against.**



## **Rebuttal**

Mr. Bell said with regard to Mr. Cassutt's argument citing the survey of his client's property, for the proposition that she, once again, misrepresented things. If you look at the survey which is attached, she shows a line clearly on her side, with two arrows on either side, on her side of the retaining wall, saying the coyote fence was to be built on her property on her side. He also referred to her diagram where she explicitly lays out the differential between the two properties, and that it is going to be built on her property. Mr. Bell said there is no question that Ms. Murdy did not lie to the City staff.

Mr. Bell said, in the blue packet [Exhibit "12"], you will see photographs he took with Mr. Cassutt present, from Mr. Cassutt's clients' property. It shows, on their terrace there is an adobe wall which is several feet high, and the fence at issue extends several feet above that, but it does not impede the view to Cerro Gordo, so you can see the statement about views is not correct. Mr. Bell said staff is already dealing with the violations, and this can be confirmed with staff. Mr. Bell spoke with Mr. Pike, the gentleman who issued the red tag, and he affirmed that he instructed them [Benns] that they could not build that fence and wall without a permit, and they had to go down and seek a permit, and they have never done that, and that red tag is not lifted. Mr. Rasch can confirm that. He said the enforcement issues will be dealt with by staff.

## **The public hearing was closed**

Councilor Bushee asked how tall the Benns' retaining wall is from their property, from the ground.

Mr. Benn said most of his property is at the top elevation of the retaining wall, but part of his property is at the base of the retaining wall, at the lower elevation.

Councilor Bushee said, "For our purposes, the part where the fence is attached, or on the other side of. How tall would you say that wall is that you were looking out at Cerro Gordo, how tall would you say that wall is."

Mr. Benn said the retaining wall comes up to the grade of the higher elevation of his property. The wall varies from 2.5 ft. to 4 ft., from the lower elevation to the higher elevation. On top of that, there is an approximately 3-3½ ft. adobe wall. On the inside of the adobe wall, is a 3-3 ½ ft. planting area, so unless you stand in the flower beds, you don't actually go to the edge of our property because the patio area is set back. So, if you are sitting in our house, and you look out, you probably have a 3 ½ ft. adobe wall from the elevation of most of our property. However, if you stand at the extreme north edge of our property, you are at times looking at an 11 ft. wall.

Councilor Bushee said, "Okay, but for all intents and purposes, that great view of Cerro Gordo, you saw maybe a 3 ft. wall, roughly. I know it changes."



Mr. Benn said, "I have the photographs, if you have the patience, I have the photographs taken from inside of our house before and after, and I would be happy to dig them out."

Councilor Bushee asked him to pass the photographs to the Council.

Mr. Benn said he would be happy to do that, commenting that you can see it dramatically changes the view. He said Mr. Rasch and Mr. Moquino have seen the house.

*[STENOGRAPHER'S NOTE: The photographs were presented to the Councilors who asked many questions relating to these photographs, but there was no indication the photographs were numbered, and the photographs were not submitted for the record. Therefore the minutes reflect terms such as "this" photograph, and "here" referring to a specific place on the photograph.]*

Councilor Trujillo said he is unclear where the property line is. He is looking at "this" photograph and he doesn't know where the property line is. He asked where the three feet starts, where is the boundary line, and if "this" fence encroaching on his property.

Mr. Bell said not at all, it is entirely on her property. In the photograph, the grey coated wall is the recently renovated retaining wall, which previously was entirely on the Abrams/Benn wall, but with the additional concrete, the very bottom of it slightly encroaches. According to Mr. Cassutt's memorandum, it is 3 ½ ft. to the top of the concrete part, and then there is an adobe wall extending on top of that.

Councilor Trujillo said he sees this, but he was hearing is that there is an encroachment going into the yard.

Mr. Bell said no, her fence is clearly and entirely just within her boundary line.

Mayor Coss asked that the photographs provided by Mr. Benn be passed around to all of the Councilors so everyone can see them.

Councilor Wurzbarger asked on "this picture," what is the approximate height. Is it 3 ft. for the adobe wall and the retaining wall is 3 ½ ft, so the total condition is about 6 ½ feet "here."

Mr. Bell said this is correct.

Councilor Wurzbarger asked how much "this" extends above the 6 ft.

Mr. Bell said 2½ to 3 ft.

Councilor Dominguez asked who owns the retaining wall.

Mr. Bell said nobody disagrees that the retaining wall is owned by the Benn/Abrams.

Councilor Heldmeyer asked, looking at “this” picture that has the patio in it, if she is standing in that yard, is the bottom of “this” adobe wall at the bottom of the yard.

Mr. Bell said the bottom of “that” adobe wall is at “their” grade, which is at the top of the retaining wall.

Councilor Heldmeyer said then from their grade, there is about 3 ft. of adobe wall, and “this” fence extends about three feet above that, more or less.

Mr. Bell said this is correct.

Mr. Cassutt said the boundary of the property is down below.

Councilor Heldmeyer said she isn’t asking where the boundary of the property is. She is asking, if she is standing in “this” yard, standing on the ground, how far does this adobe wall start at what I would see as the ground and go up about 3 ft., and then the coyote fence goes up about 3 feet above it.

Mr. Cassutt said the above wall goes 3 to 3 ½ ft. up from the upper grade of the Abrams/Benn property, but that isn’t the boundary.

Councilor Heldmeyer said, “If I’m standing in “this” yard, the bottom of “this” adobe wall is touching my toes.

[Several people talking at the same time]

Councilor Heldmeyer said the footing is a retaining wall, the top of which is even with the grade of the yard.

Councilor Wurzbarger said no, the grade of the yard is lower if you look at “that” picture.

Councilor Heldmeyer said this is what we were told earlier.

Mr. Cassutt said the distinction is that it is the upper grade of their yard, because “their” property starts below, at the bottom of the retaining wall, but then the retaining wall goes up and then you’ve got the upper grade [inaudible].

Councilor Heldmeyer said Mr. Benn said earlier that the top of the retaining wall is even with the grade of the upper yard.

Mr. Cassutt said this is correct.

Councilor Wurzbarger said if Mr. Cassutt’s clients want to build a coyote fence on top of their adobe wall, because he didn’t want the people next door to look into his property, how high could he go.

Mr. Cassutt said 3 ft.

Councilor Wurzbarger asked if this is 3 ft. above "this."

Mr. Cassutt said he doesn't think so. He can only go 6 ft. up from his boundary line.

Councilor Wurzbarger asked if this means Mr. Benn could not have built the wall higher.

Mr. Cassutt said, "I don't think so."

Mr. Rasch asked for clarification of the question.

Councilor Wurzbarger said, "On "this" picture David, you know I get grumpy after nine, could he build anything above on "this" wall, Mr. Benn.

Mr. Rasch said the maximum allowable height would be 6 ft. above grade.

Councilor Wurzbarger said, "So, "this" is grade down "here," so we approximated that as three, and approximated "that" at three, so he could have built nothing over "here."

Mr. Rasch said correct, if that is true.

Mr. Bell said this flies in the face of everything that Mr. Rasch has said. Mr. Rasch has said all along, 6 ft. from the top of the retaining wall, 6 ft. from the top of the retaining wall. That's what's okay, so this is like, I don't know where this is coming from."

Councilor Wurzbarger said if he had said that, she would have made the assumption that this could have gone up another 3 ft.

Mr. Bell said that is their grade which is at the top of the retaining wall, and they could build 6 ft. on top of that.

Councilor Wurzbarger said, "This is a bad view from your perspective, forget what we did right, what we did wrong, whose fault it is. Has there ever been any discussion of...because in one picture you can see the mountain, you can see it. And in another you can see it quite well. It looks to me like there's a house right "there" that you would see. That's your house there. Oh, I see. So, I presume in your friendly negotiations with one another, you never discussed the possibility to lower the fence in some portions that would open up your portal so you could still see. And I was going to ask that of both of you, not just one of you, whether there was any discussions about, if the issue was view, having portions removed so the view in the more significant portions could be retained."

Ms. Murdy said, "I offered to bring down that fence 8 in., when Mr. Thompson came out to my property on May 12. I also told the Canyon Neighborhood Association I would drop it even further. I would drop it 1 ft. And both my efforts in order to compromise were rejected by my neighbors. I have tried my best."

Councilor Wurzbarger said, "And from your perspective, you simply, you want your view back the way you had it."

Mr. Benn said, "When we bought the house, and when the Sanchezes built the house, there was a..."

Councilor Wurzbarger asked Mr. Benn to answer the question the way she asked it, and asked him again if he wants his view back the way it was, with no compromise.

Mr. Benn said, "Yes, with no compromise."

Councilor Bushee said, "You know where the cross bar is? How far lowering would that be."

Ms. Murdy said right after, the Canyon NA tried to broker a compromise agreement after the appeal last year. He came to my house with Mr. Bell and Mr. Cassutt and said, "Ann, would you be willing to cut the fence 2 in. above the cross bar, and I said yes I would do that. And, that I believe, is approximately one foot, and I am still willing to do that. I really would like to compromise, and I'm trying to make good here. I believe I had a valid building permit, and I still stand by that position, but I want to, like, show that I am trying to be a good neighbor and I am willing to cut that fence down 1 ft., so it would be about 2 in. above the first cross bar."

She said Randy came out with Mr. Bell and Mr. Cassutt and I was asked if I would be willing to cut it two inches above the cross bar and I agreed. I would do so.

Mr. Benn said the letter of January 12<sup>th</sup> and application for the fence says that the stringer, the cross bar, would be on her side of the property. He said the stringer is the ugliest piece of iron he's ever seen and is on his side of the property, so they now look from their property into a rather ugly iron infrastructure on our side of the property. The previous view was adobe wall, trees and sky, and now it is adobe wall, ugly stockade, ugly cross bars, tree and sky.

Councilor Calvert asked if both of these properties were at the same level, then the height of this fence would not be at issue. Mr. Bell said this is correct. Councilor Calvert said if these properties were both at the same elevation, it would be a 6 ft. fence. Mr. Bell said this is correct. Councilor Calvert said if it was build from ground up on Mr. Benn's property, he could put up a 6 ft. fence, which would be at the same finished height as the current fence. Mr. Bell said this is correct.

Councilor Calvert doesn't understand why, if in two of three situations it could end up at the same height, in this situation it can't be at that height. He doesn't understand this from a common sense perspective.

Mr. Rasch said it is very clear in the building code that on residential lots, fences may not exceed six feet in height without a variance or a height exception.

Councilor Calvert asked, "Measured from where."

Mr. Rasch said the highest grade where the fence hits the ground.

Mr. Cassutt said it is actually only 1 out of 3 situations, because if his clients built a 6 ft. fence, they would have to start at the bottom where the boundary line is. That is their lower grade, they couldn't just automatically go to the upper grade.

Councilor Calvert said they would more likely put it on their side of the retaining wall and only build it six feet from the ground up.

Mr. Cassutt said, as a practical matter, a fence like that doesn't make any sense for them.

Councilor Wurzbarger said, "What if you were to cut the fence down 12-13 in., and move this stick, move the cross piece, which is normally on the other side, to your side. Would that be a compromise that could be accepted. I'm asking....Mr. Benn."

Mr. Benn said he would have to check with Mr. Cassutt.

Mr. Benn said, "That would still be, from our perspective, a devastating thing. I would not find that to be acceptable."

**Councilor Bushee moved, seconded by Councilor Wurzbarger for purposes of discussion, to rescind the action of the Historic Design Review Board on August 22, 2006, to reduce the height of the fence from 11 ft. 6 in., on a non-contributing property in the Downtown & Eastside Historic District.**

**Discussion:** Councilor Bushee would ask her to lower the fence, but we're not getting anywhere with that.

Councilor Wurzbarger asked if the motion is to leave the fence the way it is since no compromise could be reached.

Councilor Bushee said she thinks so.

Councilor Ortiz said when the H-Board becomes stuck on this kind of minutiae, it is a disservice to the community and to these people to get stuck in this vortex of conflict. The H-Board should be about reaching that kind of solution. These are the kinds of cases which cry out for a hearing officer, and the kinds of steps where these people don't have to be stuck in this for a year. He was intrigued by the unclear hands issue which was thrown out. If you are using it as a short term rental, you really don't get a shot coming up here and saying it, I think you've satisfied that concern.

Councilor Ortiz said living here part time doesn't count against you. If the property line is at the bottom, and Mr. Benn was going to build a fence and he showed a real boundary showing his boundary, not at the retaining wall, but actually a little farther than the retaining wall, he gets a 6 ft. fence. His understanding is that the 6 ft. fence will be shorter than the fence which was built. Ms. Murdy was issued a permit to build a higher fence, but how she got that authority is beyond him. How she got staff to say whatever they said is beyond him.

However, the fact is, that the "law is the law." If Mr. Benn gets a permit for 6 ft. fence, and he builds it on his side of this boundary is in so much dispute, and that fence is shorter than yours, it is a disservice to the Code which is wrapped in conflict and not about solving peoples' problems – the H-Board ordinance.

Councilor Ortiz believes the H-Board found it right. It looked at the facts and said "six foot means six foot," and you got a permit for 9 ft., and you've got to take it down. He said it is tradition, it is common courtesy, when you build a fence and you build it on your line and you want to build a fence to make a good neighbor, which is the case between the two of you, you put the obstructionist stuff, the ugly stuff, on your side. You don't put it on the outside, that's disrespectful. He thinks this is a case where if the boundary line is not at that retaining wall, then the fence they got permission to build is too high, and it should be six feet. Because both sides don't want to compromise, because both sides are entrenched, if we uphold this appeal, we are doing a disservice to the simple common sense approach. If people can't find a way to work out a solution, then the "law is what the law is," and it's 6 ft. He said they have five photos as part of their case that show 112 in., and they have 9 ft. 6 in. o 9 ft. 7 in., which is 3 ½ ft. over 6 ft. He thinks they are out of luck. He will oppose the motion.

Mr. Bell said there is an error in this, the retaining wall is the boundary, and the retaining wall is on the boundary. There is no place for them to build a house.

Responding to a question from Mr. Benn, Mayor Coss said the motion is to uphold the appeal.

**The motion failed to pass on the following roll call vote:**

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

**Against: Councilor Dominguez, Councilor Heldmeyer, Councilor Ortiz and Councilor Trujillo.**

**The result of the vote was a tie, and Mayor Coss voted against, defeating the motion.**

**Councilor Ortiz moved, seconded by Councilor Chavez, in order to be consistent with the protocol, to uphold the decision of the Historic Design Review Board requiring that the Appellants comply with the letter of the law and put up a six foot fence, and deny the Appellant's appeal.**

**Discussion:** Councilor Chavez said to verify then you are going to ask that the height of the fence be changed from 11 ft. to 6 ft. which is the permitted height.

Councilor Ortiz said yes.

Councilor Bushee asked 6 ft. starting from where.

Councilor Ortiz said 6 ft. starting from wherever their grade is.

Councilor Bushee said it sounds like everybody, up to our last Planning & Land Use Director gave the permit their blessing. She asked Mr. Katz if they have a vested property right according to the permits received from the City, they meaning those who put up the fence according to the permits they received from the City.

Mr. Katz said they did get a permit, that permit wasn't appealed, and the permit was very clear that it would be 9 ft. 6 ft. from the ground on their side, and 6 ft. from the top of the retaining wall, which is not exactly where the fence is. He understands there probably is some space between the bottom of the retaining wall.

Councilor Bushee asked Mr. Katz to please give a yes or no answer.

Mr. Katz said, "I'm not sure of the answer."

Mr. Rasch quoted from Section 14-3.10(A)(1) as follows:

"Building Permits Applicability. No building or other structure shall be erected, moved, added to, or structurally altered without a building permit issued by the Planning & Land Use Department. A building permit shall not be issued by the Planning & Land Use Department except in conformity with the provisions of this chapter."

Mr. Rasch said this fence does not conform to the letter of the law as noted by the Councilor.

Mr. Katz said it was issued, and that's the problem.

Councilor Wurzbarger asked Mr. Rasch to reread the last sentence, and Mr. Rasch complied.

Councilor Calvert said if it was issued then it was *de facto* in conformance, or at least they acted on that information.

Mr. Katz said, "The answer is I think they may well have a vested right in the building permit, which was issued with, I think, full knowledge of what the situation was. And, if it wasn't, they should have gone out there. And then the violation was issued, and then you had Dianne's letter. But, I think there is a distinct possibility that there was a vested right with the building permit."

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

**For: Councilor Chavez, Councilor Dominguez, Councilor Heldmeyer, Councilor Ortiz and Councilor Trujillo.**

**Against: Councilor Wurzbarger, Councilor Bushee and Councilor Calvert.**

**EXPLAINING HER VOTE:** Councilor Wurzburger voted no, because she thinks when we issue a building permit, even if we made a mistake, that we need to stick by it, and that people have to be rewarded for seeking building permits in the City.

**EXPLAINING HER VOTE:** Councilor Heldmeyer said she doesn't believe we should blame the H-Board for how much time and energy and money has been spent on this. I think they just deal with what's in front of this, and this is a complicated case. I would have been nice if everybody had been able to work this out beforehand, but if we're following the letter of the law, she votes yes.

**EXPLAINING HIS VOTE:** Councilor Ortiz said we have spent 50 minutes longer on this case than we took on any number of general plan amendments, and rezonings that we've taken on any number of different houses that have gone on. This is the kind of work we're being reduced to because the H-Board and H-Board staff are not helping people solve problems. They are taking positions, sometimes erroneously, and forcing people to go through this, and forcing people to spend money on lawyers like Mr. Cassutt and Mr. Bell. The letter of the law is what it is, and so he votes yes.

**6) CONSIDERATION OF BILL NO. 2007-15; ADOPTION OF ORDINANCE NO. 2007-14 (COUNCILOR ORTIZ, MAYOR COSS, COUNCILOR HELDMEYER, COUNCILOR BUSHEE, COUNCILOR CALVERT AND COUNCILOR WURZBURGER). AN ORDINANCE AMENDING SECTIONS 14-4.3(E)(1)(C) and 14-4.3(E)(3)(6)(IV) SFCC 1987, TO DEFINE MAJOR AND MINOR PROJECTS IN THE RAILYARD REDEVELOPMENT SUBDISTRICT. (FRANK ROMERO)**

Councilor Ortiz said when this came before the Council, a change to the law was needed, and this is the cleanup language we need on major and minor projects.

**Public Hearing**

There was no one speaking for or against this request.

**The Public Hearing was closed**

**Councilor Calvert moved, seconded by Councilor Wurzburger to adopt Ordinance No. 2007-14. The motion was approved on the following Roll Call vote:**

**For: Councilor Bushee, Councilor Calvert, Councilor Chavez, Councilor Heldmeyer, Councilor Ortiz, Councilor Trujillo and Councilor Wurzburger.**

**Against: None.**

**Absent: Councilor Dominguez.**



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

### **Councilor Dominguez**

Councilor Dominguez presented a resolution directing staff to find options for ATV locations throughout the community. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "14." He asked that it go to the Public Works and Finance committees.

### **Councilor Trujillo**

Councilor Trujillo congratulated his son on making his first communion this past weekend, commenting however, that he had better be in bed at this hour. He had no further communications.

### **Councilor Wurzbarger**

Councilor Wurzbarger had no communications

### **Councilor Chavez**

Councilor Chávez distributed a Resolution directing staff to establish an endowment fund for the library, co-sponsored by Councilors Bushee, Dominguez, Trujillo, Heldmeyer and Calvert and Mayor Coss. He said it should go to Business & Quality of Life, Finance and Public Works Committees. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "15."

He spoke about issues which were created by someone who was keeping bees in Tierra Contenta on Golden Mesa. He thanked members of the City Managers staff and City Attorney Frank Katz who worked to resolve this issue which was done under the nuisance ordinance.

He said the EZC agenda will have EZ Case No. Z-ZV-04-4592, the crossings at Los Solaris, involving 156 acres with proposed such uses a hospital with a helicopter pad, high end hotel and conference center, etc. on that site. He requested an executive session at the May 30<sup>th</sup> Council meeting with regard to what is happening with Los Solaris.

He has additional issues which he will discuss with Mr. Buller and Commissioner Dominguez in Tierra Contenta and Tierra Madre neighborhoods which need attention.

### **Councilor Ortiz**

Councilor Ortiz distributed a Resolution which was prepared by staff regarding certain

uses of the impact fee capital improvement plan for parks improvements. He asked that it go to Public Works, Finance and the CIAC Committees. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "16."

Councilor Ortiz spoke about the meeting under the leadership of Mayor Coss as the result of the tragedy at Franklin Miles Park. Ms. Callahan presented a DVD on Challenge Day – a mediation/collaboration kind of program specifically for youth, saying she gave him a copy of that DVD. He told her he would be giving it to the Chief and the City Manager, and asked staff to contact the public schools with regard to the funding and scheduling of the program for our children.

He said he is asking the same questions, which he asked of the Chief at that meeting, which is at some point the Council and the Community needs to be told what the plan is to address this rash of violence in the community, and what is the timeline, resources, and who will bring the resources. He said it isn't that we aren't supportive of the Police, the Police Chief, the Police Department and what we are doing, but we need answers or guide posts to take to the Community saying we are going to stop this and we won't tolerate it. It is his hope that we get that soon.

### **Councilor Bushee**

Councilor Bushee agreed with Councilor Ortiz, saying there may be new recruits from Oregon as soon as next week, and they will need housing. She wants to use the funds in the Housing Trust Fund to subsidize leasing as soon as possible.

Councilor Bushee asked about Community Days, if it exists. People are asking about it, and there have been no notices or information to the public.

She received several emails from the blacksmith expressing concern about the coal bill. Councilor Wurzbarger said she is talking with him.

She asked if the negotiations on the water tank will be done before it goes to PUC. Mr. Buller said he spoke with Kyle Harwood about this today, understands they are almost done, and are getting it ready for PUC. It requires an amendment to the contract, and that amendment hasn't been drafted.

Councilor Bushee asked if negotiations will be finished when it comes to PUC. Mr. Buller said he will meet with them next week, noting the water staff has been meeting with them regularly, and he thinks are near completion.

Councilor Bushee said she and Councilor Trujillo sponsored a resolution regarding the RECC money being used for public safety, and it went into a black hole called the budget process. She would like that Resolution back to Council by the next Council meeting.

### **Councilor Heldmeyer**

Councilor Heldmeyer said the Police Chief has been asked to answer some of the questions asked by Councilor Ortiz at the Public Safety Committee. They have also asked for a report from the crime prevention officers about what they're doing and how they will focus their efforts on the existing problems.

Councilor Heldmeyer distributed ordinances and resolutions as follows:

A Resolution creating the office of Fire Chaplain, from the Public Safety Committee. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "17."

A proposed ordinance change with regard to a Municipal Court Bench Warrant Fee from the Public Safety Committee. A copy of the proposed ordinance change is incorporated herewith to these minutes as Exhibit "18."

A Resolution directing staff to develop a more equitable way of assessing impact fees, which needs to go to CIAC before it shuts down for the year. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "19."

A Resolution directing City staff to develop and promulgate a list of City meetings. A copy of the proposed Resolution is incorporated herewith to these minutes as Exhibit "20."

A proposed ordinance change from the BCDDRC. offering to and they believe it would be a good idea, do the development plans within the BCD because it has the expertise and more time to deal with the details than the Planning Commission. A copy of the proposed ordinance change is incorporated herewith to these minutes as Exhibit "21."

### **Mayor Coss**

Mayor Coss said will be out of town for 2 weeks, and Councilor Chavez will be out of town the first week. He has asked Councilor Heldmeyer to serve as Mayor Pro-Tem the first week and Mayor-Pro-Tem Chavez will be back in town on May 21, 2007.

Mayor Coss has been working on a community statement about the youth violence out of the meeting referred to by Councilor Dominguez, which he has distributed to the Councilors. There has been discussion as to whether or not this should be adopted as a resolution, and the City Attorney believes the Councilors can support this without violating the Open Meetings act or the rolling quorum prohibition. He has also distributed information on the Mothers Day March at Franklin Miles on Sunday, 5:00 to 7:00 p.m.

Mayor Coss distributed copies of a proposed ordinance change, which Mr. Rowe spoke about this evening. The ordinance is cosponsored by Councilors Chavez and Calvert. A copy

of the proposed ordinance change is incorporated herewith to these minutes as Exhibit "21." .

**Other**

Councilor Trujillo read the Mothers' Day March for Peace announcement for the record.

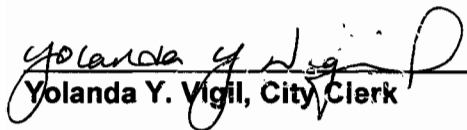
**H. ADJOURN**

There being no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 12:45 a.m.

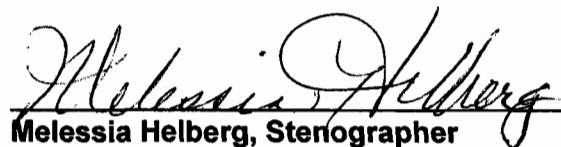
**Approved by:**

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

**ATTESTED TO:**

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

**Respectfully submitted:**

  
\_\_\_\_\_  
**Melessia Helberg, Stenographer**