



Agenda

REGULAR MEETING OF
THE GOVERNING BODY
MAY 11, 2011
CITY COUNCIL CHAMBERS

AMENDED – ITEM #H-3

AFTERNOON SESSION – 5:00 P.M.

CITY CLERK'S OFFICE

DATE 5-9-11 TIME 4:45 pm

SERVED BY _____

RECEIVED BY Tina Dominguez

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. SALUTE TO THE NEW MEXICO FLAG
4. INVOCATION
5. ROLL CALL
6. APPROVAL OF AGENDA
7. APPROVAL OF CONSENT CALENDAR
8. APPROVAL OF MINUTES: Reg. City Council Meeting – April 27, 2011
9. PRESENTATIONS
 - a) Employee of the Month for May 2011 – David Rael, Detective; Police Department. (5 minutes)
 - b) Santa Fe 2010/2011 City Champions: (Councilor Trujillo) (10 minutes)
 - 1) Basketball Champions – Capital High School
 - 2) Football Champions – St. Michael's High School
 - 3) Jojo Padilla, Team Manager – St. Michael's High School
 - c) 2011 Children's Water Conservation Poster Contest. (Daniel Ransom) (5 minutes)
 - d) Proclamation – May 11, 2011 Cornerstones Community Partnership Day. (Matthew O'Reilly) (5 minutes)
 - e) 2011 New Mexico Youth of the Year for Boy's and Girl's Club of America – Marissa Martinez, Pueblo of Pojoaque Boy's and Girls Club.



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10. CONSENT CALENDAR

- a) Request for Approval of Professional Services Agreement – Herb Martinez Park Tennis Courts Resurfacing; Renner Sports Surfaces. (Frank Archuleta)
- b) Request for Approval of Budget Transfers and Related Increases into Facility Maintenance Repair and City Hall Renovations Funds for Facilities Division. (Chip Lilienthal)
- c) Request for Approval of Purchase and Sale Agreement – Property Located at 1164 Camino San Acacio; Robert Martinez and Betty Martinez. (Edward Vigil)
- d) Request for Approval of Amendment No. 2 to Memorandum of Understanding – Nutrition, Transportation and In-Home Support Services Rendered for Fiscal Year 2010/2011 for Senior Services Division; Santa Fe County. (Isaac Pino)
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- h) CONSIDERATION OF RESOLUTION NO. 2011-_____. (Mayor Coss, Councilor Trujillo, Councilor Ortiz and Councilor Dominguez)
A Resolution Directing Staff to Work With Rodeo De Santa Fe in Order to Locate Funding Sources for the Purpose of Exploring and Developing an Indoor Arena Development Complex at the Rodeo Grounds (Fabian Trujillo)



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- i) Request for Approval of Revisions to City of Santa Fe Investment Policy. (Helene Hausman)
- j) Request for Approval to Publish Notice of Public Hearing on June 8, 2011:
 - 1) Bill No. 2011-19: An Ordinance Approving a Lease Between the City of Santa Fe and Whiskey Golf Investments, L.P. for Approximately 0.465 Acres of City Owned Land Located at the Santa Fe Municipal Airport for Construction of Aircraft Hangars for its Own Private Use and Other Related Purposes. (Councilor Wurzburger) (Jim Montman)
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 - 3) Bill No. 2011-21: An Ordinance Repealing Article 20-21 SFCC 1987 and Creating a New Article 20-21 SFCC 1987 Regarding Vehicle Towing Services. (Councilor Trujillo) (Edward Romero)
 - 4) Bill No. 2011-22: An Ordinance Amending Rule 8 of Exhibit A, Chapter 22 SFCC 1987, to Repeal the 4.7 Percent Per Year Sewer Rate Increases for Monthly Sewer Service and Usage Fees That Were to be Effective October 1, 2012, October 1, 2013 and October 1, 2014; and Amending Rule 12, of Exhibit A of Chapter 22 SFCC 1987 to Repeal the 4.7 Percent Per Year Increases in the Mass Based Cost of Providing Air to Remove the Chemical Oxygen Demand in Wastewater That Were to be Effective October 1, 2012, October 1, 2013 and October 1, 2014. (Councilor Wurzburger, Councilor Ortiz and Councilor Trujillo) (Brian Snyder)



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- 5) Bill No. 2011-23: An Ordinance Amending Various Sections of the *City of Santa Fe Uniform Traffic Ordinance* Related to Bicycles. (Councilor Bushee) (Robert Siqueiros)
- 6) Bill No. 2011-24: An Ordinance Amending Section 12-2 SFCC 1987; Adopting the 2009 International Fire Code as Amended by the Governing Body (Mayor Coss) (Reynaldo Gonzales and Fire Chief Barbara Salas)
- k) CONSIDERATION OF RESOLUTION NO. 2011-_____. (Mayor Coss, Councilor Trujillo and Councilor Romero)
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12. CONSIDERATION OF RESOLUTION NO. 2011-_____. (Councilor Ortiz, Councilor Trujillo, Councilor Chavez and Councilor Dominguez)
A Resolution Endorsing the Request of the Friends of the Pecos Historical Park to the United States Postal Service to Issue a Commemorative Stamp Honoring the Sesquicentennial Anniversary of the Battle of Glorieta Pass and Recognizing the Importance of the Battle of Glorieta Pass. (Melissa Byers)
13. MATTERS FROM THE CITY MANAGER
14. MATTERS FROM THE CITY ATTORNEY
15. MATTERS FROM THE CITY CLERK



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16. COMMUNICATIONS FROM THE GOVERNING BODY

EVENING SESSION – 7:00 P.M.

- A. CALL TO ORDER
- B. PLEDGE OF ALLEGIANCE
- C. SALUTE TO THE NEW MEXICO FLAG
- D. INVOCATION
- E. ROLL CALL
- F. PETITIONS FROM THE FLOOR
- G. APPOINTMENTS
- H. PUBLIC HEARINGS:
 - 1) Request from Casa Chimayo, LLC for the following: (Yolanda Y. Vigil)
 - a) Pursuant to §60-6B-10 NMSA 1978, a Request for a Waiver of the 300 Foot Location Restriction to Allow the Sale of Alcoholic Beverages at Casa Chimayo, 409 W. Water Street Which is Within 300 Feet of Our Lady of Guadalupe Church, 417 Agua Fria;
 - b) If the Waiver of the 300 Foot Restriction is Granted, a Request from Casa Chimayo, LLC for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be Located at the Casa Chimayo, 409 West Water Street, Santa Fe.
 - 2) Request for a Waiver from Goler Fine Imported Shoes of the 300 Foot Location Restriction and Approval to Allow the Dispensing/Consumption of Wine at Goler Fine Imported Shoes, 125 West Palace Avenue, which is Within 300 Feet of the Cathedral Basilica of Saint Francis of Assisi, 131 Cathedral Place. The Request is for a Reception to be held on May 14, 2010 from 12:00 p.m. to 4:00 p.m. (Yolanda Y. Vigil)



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- 3) Request from the Center for Contemporary Arts (CCA) for a Permanent Waiver of the 300 Foot Location Restriction to Allow the Dispensing/Sale of Alcoholic Beverages for Art Opening and Fundraising Events held at the Center for Contemporary Arts (CCA), 1050 Old Pecos Trail, which is Within 300 Feet of St. John's United Methodist Church, 1200 Old Pecos Trail, the Immanuel Lutheran Church, LCMS, 209 East Barcelona Road and the Temple Beth Shalom, 205 East Barcelona Road. (Yolanda Y. Vigil)
 - a) Request from the Center for Contemporary Arts (CCA) for the Following: **(Only if H-3 is Not Approved)**

Request from the Center for Contemporary Arts (CCA) for a Waiver of the 300 Foot Location Restriction to Allow the Dispensing /Sale of Alcoholic Beverages at the Center for Contemporary Arts (CCA), 1050 Old Pecos Trail on May 13, 14; June 4, 11, 18, 25; July 8, 9 and August 5, 2011. (Craig Anderson and Yolanda Y. Vigil)
- 4) Request for Approval of Community Development Block Grant (CDBG) Annual Action Plan for Fiscal Year 2011/2012. (Kym Dicome)
- 5) Telecommunications Appeals – Case #2011-15A and Case #2011-15B:
 - a) **Case #2011-15A.** Cellular Phone Task Force, et al. Appeals the December 21, 2010 Decision of the City of Santa Fe Board of Adjustment in Case No. 2010-148 Approving the August 18, 2010 Decision Letter Issued by the City of Santa Fe Land Use Department for Certain Modifications to an AT&T Telecommunications Base Station Located at Paseo de Vistas, Identified as Site No. S205. (Dan Esquibel) (Kelley Brennan)
 - b) **Case #2011-15B.** Cellular Phone Task Force, et al. Appeals the December 21, 2010 Decision of the City of Santa Fe Board of Adjustment in Case No. 2010-149 Approving the August 18, 2010 Decision Letter Issued by the City of Santa Fe Land Use Department for Certain Modifications to an AT&T Telecommunications Base Station Located at 1214 Camino Carlos Rey, Identified as Site No. S215. (Dan Esquibel) (Kelley Brennan)



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- 6) Telecommunications Appeals – 1200 Old Pecos, Case #2010-190, Case #H-11-004A and Case #H-11-004B:
 - a) **Case #2010-190.** AT&T Appeals the February 15, 2011 Decision of the City of Santa Fe Board of Adjustment in Case #2010-190 Denying AT&T a Special Exception for a Telecommunications Facility at St. John's Methodist Church at 1200 Old Pecos Trail Together with a Waiver to Allow 53 Foot Height Where 34 Feet is Allowed in the R-1 District Pursuant to 14-6.2(E). The Property is Located in the Historic Review Overlay District. (Tamara Baer) (Kelley Brennan)
 - b) **Case #H-11-004A.** Cellular Phone Task Force, et al. Appeals the March 8, 2011 Decision of the City of Santa Fe Historic Design Review Board (Board) Designating the St. John's Methodist Church Located at 1200 Old Pecos Trail as Non-Contributing. (David Rasch) (Kelley Brennan)
 - c) **Case #H-11-004B.** Cellular Phone Task Force, et al. Appeals the March 8, 2011 decision of the City of Santa Fe Historic Design Review Board (Board) Approving the Alteration of a Chimney and Related Improvements to Conceal Multiple Antennas Located at St. John's Methodist Church Located at 1200 Old Pecos Trail. (David Rasch) (Kelley Brennan)
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I. ADJOURN

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

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SUMMARY INDEX
SANTA FE CITY COUNCIL MEETING
May 11, 2011

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| <u>AFTERNOON SESSION</u> | | |
| CALL TO ORDER AND ROLL CALL | Quorum | 1 |
| APPROVAL OF AGENDA | Approved | 1 |
| APPROVAL OF CONSENT CALENDAR | Approved [amended] | 1-2 |
| CONSENT CALENDAR LISTING | | 2-4 |
| APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – APRIL 27, 2011 | Approved | 4 |
| <u>PRESENTATIONS</u> | | |
| EMPLOYEE OF THE MONTH FOR MAY 2011 – DAVID RAEI, DETECTIVE, POLICE DEPARTMENT | | 4-5 |
| SANTA FE 2010/2011 CITY CHAMPIONS: | | |
| BASKETBALL CHAMPIONS – CAPITAL HIGH SCHOOL | | 5 |
| FOOTBALL CHAMPIONS – ST. MICHAEL'S HIGH SCHOOL | | 5 |
| JOJO PADILLA, TEAM MANAGER – ST. MICHAEL'S HIGH SCHOOL | | 5 |
| 2011 CHILDREN'S WATER CONSERVATION POSTER CONTEST | | 5-6 |
| PROCLAMATION – MAY 11, 2011 CORNERSTONES COMMUNITY PARTNERSHIP DAY | | 6 |
| PROCLAMATION DECLARING BICYCLE TO WORK WEEK | | 7 |
| 2011 NEW MEXICO YOUTH OF THE YEAR FOR BOY'S AND GIRLS' CLUB OF AMERICA – MARISSA MARTINEZ, PUEBLO OF POJOAQUE BOY'S AND GIRL'S CLUB | | 7 |

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|--|------------------------|---------------|
| <u>CONSENT CALENDAR DISCUSSION</u> | | |
| CONSIDERATION OF RESOLUTION NO. 2011-28 A RESOLUTION AUTHORIZING THE CITY OF SANTA FE TO SUPPORT A LIVING SANTA FE RIVER BY ALLOWING WATER TO BYPASS McCLURE AND NICHOLS RESERVOIRS IN 2011 | Approved [amended] | 7-17 |
| ***** END OF CONSENT CALENDAR DISCUSSION ***** | | |
| REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON JUNE 8, 2011: BILL NO. 2011-17: AN ORDINANCE AMENDING ORDINANCE NO. 2009-15 THAT AUTHORIZED THE SALE OF REAL PROPERTY LOCATED ADJACENT TO 312 CATRON STREET IN ORDER TO AMEND THE TERMS OF THE SALE SPECIFIC TO THE TIME AND MANNER OF PAYMENT | Approved | 17-18 |
| CONSIDERATION OF RESOLUTION NO. 2011- 29 A RESOLUTION ENDORSING THE REQUEST OF THE FRIENDS OF THE PECOS HISTORICAL PARK TO THE UNITED STATES POSTAL SERVICE TO ISSUE A COMMEMORATIVE STAMP HONORING THE SESQUICENTENNIAL ANNIVERSARY OF THE BATTLE OF GLORIETA PASS AND RECOGNIZING THE IMPORTANCE OF THE BATTLE OF GLORIETA PASS | Approved | 18-19 |
| MATTERS FROM THE CITY MANAGER | None | 19 |
| MATTERS FROM THE CITY ATTORNEY | None | 19 |
| MATTERS FROM THE CITY CLERK | None | 19 |
| COMMUNICATIONS FROM THE GOVERNING BODY | Information/discussion | 19-23 |
| <u>EVENING SESSION</u> | | |
| CALL TO ORDER AND ROLL CALL | Quorum | 24 |
| PETITIONS FROM THE FLOOR | | 24-25 |
| APPOINTMENTS | None | 25 |

ITEM

ACTION

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PUBLIC HEARINGS

REQUEST FROM CASA CHIMAYO, LLC, FOR THE FOLLOWING:

PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT CASA CHIMAYO, 409 W. WATER STREET WHICH IS WITHIN 300 FEET OF OUR LADY OF GUADALUPE CHURCH, 417 AGUA FRIA.

Approved

25-26

IF THE WAIVER OF THE 300 FOOT RESTRICTION IS GRANTED, A REQUEST FROM CASA CHIMAYO, LLC, FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO BE LOCATED AT THE CASA CHIMAYO, 409 WEST WATER STREET, SANTA FE.

Approved

26

REQUEST FROM GOLER FINE IMPORTED SHOES FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE DISPENSING/ CONSUMPTION OF WINE AT GOLER FINE IMPORTED SHOES, 125 WEST PALACE AVENUE, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF ST. FRANCIS OF ASSISI, 131 CATHEDRAL PLACE. THE REQUEST IS FOR A RECEPTION TO BE HELD ON MAY 14, 2010, FROM 12:00 P.M. TO 4:00 P.M.

Approved

26-27

REQUEST FROM THE CENTER FOR CONTEMPORARY ART (CCA) FOR A PERMANENT WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE DISPENSING/SALE OF ALCOHOLIC BEVERAGES FOR ART OPENING AND FUNDRAISING EVENTS HELD AT THE CENTER FOR CONTEMPORARY ARTS (CCA), 1050 OLD PECOS TRAIL, WHICH IS WITHIN 300 FEET OF ST. JOHN'S UNITED METHODIST CHURCH, 1200 OLD PECOS TRAIL, THE IMMANUEL LUTHERAN CHURCH, LCMS, 209 EAST BARCELONA ROAD AND THE TEMPLE BETH SHALOM, 205 EAST BARCELONA ROAD

Approved

27-28

| <u>ITEM</u> | <u>ACTION</u> | <u>PAGE #</u> |
|--|---------------|---------------|
| REQUEST FOR APPROVAL OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ACTION PLAN FOR FISCAL YEAR 2011/2012 | Approved | 28-30 |
| TELECOMMUNICATIONS APPEALS – CASE #2011-15A AND CASE #2011-15B: | | |
| <u>CASE #2011-15A.</u> CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE DECEMBER 21, 2010 DECISION OF THE CITY OF SANTA FE BOARD OF ADJUSTMENT IN CASE NO. 2010-148, APPROVING THE AUGUST 18, 2010 DECISION LETTER ISSUED BY THE CITY OF SANTA FE LAND USE DEPARTMENT FOR CERTAIN MODIFICATIONS TO AN AT&T TELECOMMUNICATIONS BASE STATION LOCATED AT PASEO DE VISTAS, IDENTIFIED AS SITE NO. S205 | Appeal denied | 30-39 & 59 |
| <u>CASE #2011-15B.</u> CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE DECEMBER 21, 2010 DECISION OF THE CITY OF SANTA FE BOARD OF ADJUSTMENT IN CASE NO. 2010-149, APPROVING THE AUGUST 18, 2010 DECISION LETTER ISSUED BY THE CITY OF SANTA FE LAND USE DEPARTMENT FOR CERTAIN MODIFICATIONS TO AN AT&T TELECOMMUNICATIONS BASE STATION LOCATED AT 1214 CAMINO CARLOS REY, IDENTIFIED AS SITE NO. S215 | Appeal denied | 30-39 & 59 |

| <u>ITEM</u> | <u>ACTION</u> | <u>PAGE #</u> |
|---|---------------|---------------|
| TELECOMMUNICATIONS APPEALS – 1200 OLD PECOS TRAIL, CASE #20110-190, CASE #H-11-004A AND CASE #H-11-004B: | | |
| <u>CASE #2010-190.</u> AT&T APPEALS THE FEBRUARY 15, 2011 DECISION OF THE CITY OF SANTA FE BOARD OF ADJUSTMENT IN CASE #2010-190 DENYING AT&T A SPECIAL EXCEPTION FOR A TELECOMMUNICATIONS FACILITY AT ST. JOHN'S METHODIST CHURCH AT 1200 OLD PECOS TRAIL TOGETHER WITH A WAIVER TO ALLOW 53 FOOT HEIGHT WHERE 34 FEET IS ALLOWED IN THE 4-1 DISTRICT PURSUANT TO 15-6.2(E). THE PROPERTY IS LOCATED IN THE HISTORIC REVIEW OVERLAY DISTRICT | Appeal upheld | 39-58 & 59-61 |
| CASE #H-11-004A. CELLULAR PHONE TASK FOR CE, ET AL, APPEALS THE MARCH 8, 2011 DECISION OF THE CITY OF SANTA FE HISTORIC DESIGN REVIEW BOARD (BOARD), DESIGNATING THE ST. JOHN'S METHODIST CHURCH LOCATED AT 1200 OLD PECOS TRAIL AS NON-CONTRIBUTING | Appeal denied | 39-58 & 61-62 |
| <u>CASE #H-11-004B.</u> CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE MARCH 8, 2011 DECISION OF THE CITY OF SANTA FE HISTORIC DESIGN REVIEW BOARD (BOARD), APPROVING THE ALTERATION OF A CHIMNEY AND RELATED IMPROVEMENTS TO CONCEAL MULTIPLE ANTENNAS LOCATED AT ST. JOHN'S METHODIST CHURCH LOCATED AT 1200 OLD PECOS TRAIL | Appeal denied | 39-58 & 62 |
| REQUEST FROM BALCONIES, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISES CONSUMPTION ONLY) TO BE LOCATED AT THE ORE HOUSE, 50 LINCOLN AVENUE | | 62 |
| ADJOURN | | 63 |

**MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
May 11, 2011**

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 11, 2011, at approximately 5:00 p.m., in the City Hall Council Chambers. Following the Pledge of Allegiance, Salute to the New Mexico flag, and the Invocation, roll call indicated the presence of a quorum, as follows:

Members Present

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

Others Attending

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

6. APPROVAL OF AGENDA

MOTION: Councilor Wurzbarger moved, seconded by Councilor Calvert, to approve the agenda as published.

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

7. APPROVAL OF CONSENT CALENDAR

Councilor Bushee asked to be shown as a sponsor on Item 10(j)(4).

MOTION: Councilor Ortiz moved, seconded by Councilor Calvert, to approve the following Consent Calendar, as amended.

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

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

Against: None.

- a) REQUEST FOR APPROVAL OF PROFESSIONAL SERVICES AGREEMENT – HERB MARTINEZ PARK TENNIS COURTS RESURFACING; RENNER SPORTS SURFACES. (FRANK ARCHULETA)
- b) REQUEST FOR APPROVAL OF BUDGET TRANSFERS AND RELATED INCREASES INTO FACILITY MAINTENANCE REPAIR AND CITY HALL RENOVATIONS FUNDS FOR FACILITIES DIVISION. (CHIP LILIENTHAL)
- c) REQUEST FOR APPROVAL OF PURCHASE AND SALE AGREEMENT – PROPERTY LOCATED AT 1164 CAMINO SAN ACACIO; ROBERT MARTINEZ AND BETTY MARTINEZ. (EDWARD VIGIL)
- d) REQUEST FOR APPROVAL OF AMENDMENT NO. 2 TO MEMORANDUM OF UNDERSTANDING – NUTRITION, TRANSPORTATION AND IN-HOME SUPPORT SERVICES RENDERED FOR FISCAL YEAR 2010/2011 FOR SENIOR SERVICES DIVISION; SANTA FE COUNTY. (ISAAC PINO)
- e) REQUEST FOR APPROVAL OF EXEMPT PROCUREMENT – THREE (3) LIFEPAK 15 CARDIAC MONITORS FOR FIRE DEPARTMENT; PHYSIO-CONTROL, INC. (JAN SNYDER)
 - 1) REQUEST FOR APPROVAL OF BUDGET INCREASE – FIRE PROPERTY TAX.
- f) REQUEST FOR APPROVAL OF PROCUREMENT UNDER STATE PRICE AGREEMENT – TWO (2) AMBULANCES FOR FIRE DEPARTMENT; SOUTHWEST AMBULANCE SALES. (JAN SNYDER)
 - 1) REQUEST FOR APPROVAL OF BUDGET INCREASE – FIRE PROPERTY TAX.

- g) REQUEST FOR APPROVAL OF AMENDMENT TO FISCAL YEAR 2020/2011 ANNUAL ACTION PLAN AND COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) CONTRACT; SANTA FE YOUTHWORKS. (KYM DICOME)
- h) CONSIDERATION OF RESOLUTION NO. 2011-27 (MAYOR COSS, COUNCILOR TRUJILLO, COUNCILOR ORTIZ AND COUNCILOR DOMINGUEZ). A RESOLUTION DIRECTING STAFF TO WORK WITH RODEO DE SANTA FE IN ORDER TO LOCATE FUNDING SOURCES FOR THE PURPOSE OF EXPLORING AND DEVELOPING AN INDOOR ARENA DEVELOPMENT COMPLEX AT THE RODEO GROUNDS. (FABIAN TRUJILLO)
- i) REQUEST FOR APPROVAL OF REVISIONS TO CITY OF SANTA FE INVESTMENT POLICY. (HELENE HAUSMAN)
- j) REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON JUNE 8, 2011:
 - 1) BILL NO. 2011-19: AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND WHISKEY GOLF INVESTMENTS, L.P., FOR APPROXIMATELY 0.465 ACES OF CITY OWNED LAND LOCATED AT THE SANTA FE MUNICIPAL AIRPORT FOR CONSTRUCTION OF AIRCRAFT HANGARS FOR ITS OWN PRIVATE USE AND OTHER RELATED PURPOSES (COUNCILOR WURZBURGER). (JIM MONTMAN)
 - a) REQUEST FOR APPROVAL OF A LEASE AGREEMENT – CONSTRUCTING A HANGAR AND RELATED OFFICE SPACE FOR PRIVATE USE AT SANTA FE MUNICIPAL AIRPORT; WHISKEY GOLF INVESTMENTS, L.P. (JIM MONTMAN)
 - 2) BILL NO. 2011-20: AN ORDINANCE AMENDING CHAPTER 7 SFCC 1987, REGARDING BUILDING AND RELATED CODES; ADOPTING THE 2009 INTERNATIONAL BUILDING CODE, THE 2009 INTERNATIONAL RESIDENTIAL BUILDING CODE, THE 2009 INTERNATIONAL EXISTING BUILDING CODE THE 2009 UNIFORM MECHANICAL CODE, THE 2009 UNIFORM PLUMBING CODE, THE 2011 NATIONAL ELECTRIC CODE AND OTHER RELATED CODES AS AMENDED BY THE STATE OF NEW MEXICO AND THE CITY OF SANTA FE. (MAYOR COSS) (MATTHEW O'REILLY)
 - 3) BILL NO. 2011-21: AN ORDINANCE REPEALING ARTICLE 20-21 SFCC 1987 AND CREATING A NEW ARTICLE 20-21 SFCC 1987, REGARDING VEHICLE TOWING SERVICES (COUNCILOR TRUJILLO). (EDWARD ROMERO)

- 4) **BILL NO. 2011-22; AN ORDINANCE AMENDING RULE 8 OF EXHIBIT A, CHAPTER 22 SFCC 1987, TO REPEAL THE 4.7 PERCENT PER YEAR SEWER RATE INCREASES FOR MONTHLY SEWER SERVICE AND USAGE FEES THAT WERE TO BE EFFECTIVE OCTOBER 1, 2012, OCTOBER 1, 2013 AND OCTOBER 1, 2014; AND AMENDING RULE 12, OF EXHIBIT A OF CHAPTER 22 SFCC 1987, TO REPEAL THE 4.7 PERCENT PER YEAR INCREASES IN THE MASS BASED COST OF PROVIDING AIR TO REMOVE THE CHEMICAL OXYGEN DEMAND IN WASTEWATER THAT WERE TO BE EFFECTIVE OCTOBER 1, 2012, OCTOBER 1, 2013 AND OCTOBER 1, 2014 (COUNCILOR WURZBURGER, COUNCILOR ORTIZ AND COUNCILOR TRUJILLO AND COUNCILOR BUSHEE). (BRIAN SNYDER)**
- 5) **BILL NO. 2011-23: AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE CITY OF SANTA FE UNIFORM TRAFFIC ORDINANCE RELATED TO BICYCLES (COUNCILOR BUSHEE). (ROBERT SIQUEIROS)**
- 6) **BILL NO. 2011-24: AN ORDINANCE AMENDING SECTION 12-2 SFCC 1987; ADOPTING THE 2009 INTERNATIONAL FIRE CODE AS AMENDED BY THE GOVERNING BODY (MAYOR COSS). (REYNALDO GONZALES AND FIRE CHIEF BARBARA SALAS)**

k) ***[Removed for discussion by Councilor Ortiz]***

8. APPROVAL OF MINUTES: REGULAR CITY COUNCIL MEETING – APRIL 27, 2011.

MOTION: Councilor Dominguez moved, seconded by Councilor Ortiz, to approve the minutes of the Regular City Council meeting of April 27, 2011, as presented.

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

9. PRESENTATIONS

- a) **EMPLOYEE OF THE MONTH FOR MAY 2011 – DAVID RAE, DETECTIVE, POLICE DEPARTMENT.**

Mayor Coss read the letter of nomination into the record, and thanked him for his work. He presented Detective Rael with an Employee of the Month Certificate and a check for \$100 from the Employee Benefit Committee.

Detective Rael thanked the Governing Body and his co-workers for this honor, and said he loves working here.

b) SANTA FE 2010/2011 CITY CHAMPIONS. (COUNCILOR TRUJILLO)

1) BASKETBALL CHAMPIONS – CAPITAL HIGH SCHOOL

Mayor Coss, assisted by Councilor Trujillo, presented trophies to the Capital High Basketball team, the 2010/2011 City Basketball Champions.

The Coach thanked the Governing Body for this honor, noting there are only 2 seniors, and 10 members are returning next year.

2) FOOTBALL CHAMPIONS – ST. MICHAEL'S HIGH SCHOOL

Mayor Coss said St. Michael's isn't here this evening, and said the Michael's High School football team, coached by Joey Fernandez and assistants Joaquin Garcia, Kevin Garcia, Kevin Hawk and Neil Windom, are the 2010/2011 City Football champions.

3) JOJO PADILLA, TEAM MANAGER – ST. MICHAEL'S HIGH SCHOOL

Councilor Trujillo said this is a special award to JoJo Padilla, Team Manager, St. Michael's High School, who has given so much to the community youth sports, and JoJo is always coaching or assisting in sports. Councilor Trujillo presented him with a trophy, and thanks for all he does for Santa Fe. He said Mr. Padilla, in 2007, was one of three people who received the New Mexico Activities Association Sportsman's Award.

Mr. Padilla thanked everyone for this honor, saying he likes working with kids.

c) 2011 CHILDREN'S WATER CONSERVATION POSTER CONTEST. (DANIEL RANSOM)

Mayor Coss said he is always amazed at how many young artists we have learning about water and water conservation. He said this generation will be in charge of making Santa Fe last another 400 years. He said it is always fun to see what the kids think about water and their ideas for saving water and using it wisely. He congratulated the winners, and the families and teachers who helped them.

Dan Ransom announced the winners of 8th Annual 2011 Children's Water Conservation Poster contest, noting there were 460 poster entries from public and private schools. He said the theme this year is "Fix a Leak," stressing the importance of caring for our water supply. He said the children understand

this and showed great creativity, artistic design and clarity in their posters. He presented each of the winners with a trophy and a prize package. He said the grand prize winner's poster will be displayed on the back of a City bus for one year, and the posters of the winners will be featured in the official 2012 Water Conservation Calendar. He congratulated all of the winners.

Mayor Coss, assisted by Councilor Calvert, presented each of the winners with a trophy and a prize package.

MOTION: Councilor Bushee moved, seconded by Councilor Wurzbarger, to reconsider the previous approval of the agenda, to add a new item to the agenda, Proclamation for Bike to Work Week, and to approve the agenda as amended.

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

d) PROCLAMATION – MAY 11, 2011 CORNERSTONES COMMUNITY PARTNERSHIP DAY. (MATTHEW O'REILLY)

Mayor Coss read a proclamation into the record declaring May 11, 2011, as "Cornerstones Community Partnership Day. He presented the members of Cornerstones with the Proclamation.

Robin Jones, Executive Director, accepted the Proclamation on behalf of the current and past Board members, staff, volunteers. She said the 25 years has gone by quickly. Ms. Jones said Cornerstones wants to extend the love of traditional building to all generations, noting the next generation needs to know how to preserve the old, beautiful buildings and to maintain cultural traditions. She said they are happy to be working on the restoration of the San Miguel Chapel. Ms. Jones presented the Mayor and Council with small medallions to remind them how much fun it is to play in the mud.

Pete Talbott, Chair of the Board, said they put up scaffolding around St. Miguel last weekend, and the Mayor helped to make an adobe bricks. He said Cornerstones uses volunteers to accomplish its work, and they provide the grant-writing and professional training. He invited people to volunteer. He thanked the City for the proclamation.

Councilor Wurzbarger said Cornerstones was the first Board on which she served on coming to Santa Fe, and she can't believe it has been 25 years. She thanked them for keeping this work moving forward.

e) PROCLAMATION DECLARING MAY 16-20, 2011 AS BICYCLE TO WORK WEEK.
(COUNCILOR BUSHEE)

Mayor Coss read a proclamation into the record, declaring May 16-20, 2011, as "Santa Fe Bike to Work Week," and encouraged residents to participate in the activities during this week, including biking to work. He presented the proclamation to Councilor Bushee, Chair of the Bicycle and Trails Advisory Committee.

e) f) 2011 NEW MEXICO YOUTH OF THE YEAR FOR BOY'S AND GIRLS' CLUB OF AMERICA – MARISSA MARTINEZ, PUEBLO OF POJOAQUE BOY'S AND GIRL'S CLUB.

Mayor Coss introduced Marissa Martinez, the New Mexico Youth of the Year for Boy's and Girl's club of America, from the Pueblo of Pojoaque Boys and Girls Club.

Robert Romero said he was on the selection Committee, noting Ms. Martinez is the State Champion and will be competing in the national event, and said Ms. Martinez wants to practice her speech before the Governing Body.

Ms. Martinez presented the speech she will be giving at the national competitions in June in Dallas, Texas.

Mayor Coss thanked her for sharing her excellent speech, and wished her well in the competitions.

CONSENT CALENDAR DISCUSSION

10 (k) CONSIDERATION OF RESOLUTION NO. 2011-28 (MAYOR COSS, COUNCILOR TRUJILLO AND COUNCILOR ROMERO). A RESOLUTION AUTHORIZING THE CITY OF SANTA FE TO SUPPORT A LIVING SANTA FE RIVER BY ALLOWING WATER TO BYPASS McCLURE AND NICHOLS RESERVOIRS IN 2011. (BRIAN DRYPOLCHER).
(Postponed at April 27, 2011 City Council Meeting)

Councilor Ortiz said, given the discussions about this Resolution at Committee, and when it was postponed by the Council, he still is not satisfied that Paragraph 1 actually sets out the maximum amount of water than can be diverted. He has seen emails between staff talking about the definition of emergency, and is not comfortable that it clearly is defined. He said if we were to allow this diversion from the Reservoir in the year we are expecting, we will have to offset that water supply with increased pumping in the well fields and/or drawing from the Buckman Direct Diversion ["BDD"]. He said this exchange wouldn't meet the proposed definition by staff, or the River Commission or others.

Councilor Ortiz proposed to amend Paragraph 1, page 4, line 3, as follows: "... River Commission in an amount that shall not exceed 300 afy per year.

Councilor Ortiz said he believes this is what the Summary Report of Recommendations spells out.

Councilor Ortiz said on page 4, line 7, paragraph 3, provides, "The Water Division shall regulate the bypass flows, which regulation may include reducing or eliminating the bypass flows as necessary for operational or emergency reasons. He suggested amending line 9, page 4, as follows: "...reasons, or to insure that there shall not be increased pumping from any of the City's wellfields this summer. He said would like a better sense of allowing the proposed by-pass only insofar as it doesn't impact an increase in pumping because of this flow.

Mr. Drypolcher said Water Division staff has a much better handle on the portfolio of water supplies to manage. He said, "It would not be only in the driest of years that there might be an increase in pumping in order to offset that which is provided to the River through by-pass flows. In other words, we could envision other scenarios, even in a normal year, where, because we are by this measure and by the provisions of the Long Range Water Supply Plan, making provisions to put water in the river, that's water from our reservoir water supply that's not available to go into the system. So, water would need to come from somewhere else and that would include Buckman Direct Diversion, or it could include the wells."

Councilor Ortiz said this is the question and the rub he's having with this, especially in a drought year, noting he has been on the Council for two of the drought years, where we saw an increase in pumping and all the harm shown. He doesn't want to be in the situation where the City is bypassing the water treatment facility – taking water from peoples' taps – so we can let the water run down the Santa Fe River. He doesn't believe we have come up with an operational definition to clearly identify that. He said the Resolution says the Water Division will regulate it, and they can reduce or eliminate the bypass flow "as necessary for operational or emergency reasons."

Councilor Ortiz said the definition he wants staff to provide is what would be an operational concern, and the reason for us to let the water bypass the water treatment facility, so that as a part of our water portfolio we therefore would have to use other sources which is groundwater. He said his thinking is to use as much of the surface water as possible, before we start impacting our groundwater. He said if we adopt the Resolution, in its current form, and certainly if we were to adopt the summary report without scrutiny, we would be saying as a policy that it is okay to bypass the surface water for really, largely esthetic and other reasons down the River. He is not okay with that concept. Councilor Ortiz said if staff has language which addresses this concern, he would vote in favor of the Resolution. He said he saw Claudia Borchert's email to the Mayor and asked her if she has other language she can propose to address his concern.

Ms. Borchert said it might help if she took a step back and talked about the numbers associated with the Santa Fe River. Mr. Borchert said, "We have a water right of 5,040 afy for the Santa Fe River, so in a year where we would want to maximize the use of our surface water, that's how much we would want to use. That is above the average amount of water that the watershed yields. So, if we were to never pump groundwater in order to put water in the river, then that would mean we could put water in the river only in those years where the yield was above average. So, that's a little bit about how that math works out."

Councilor Ortiz said he really is concerned, not with the hypothetical situation or here today with debating the validity or viability of the Summary Recommendations, about here this summer, and what we can expect given the fact that we are headed into a very dry summer with a very low reservoir. He said he is looking to put language into the Resolution which gives the Water Division the ability to make a decision to turn off the by-pass flow if it meant pumping our wellfields. This is the question he is trying to have answered.

Ms. Borchert said she has one other suggestion. She said we could use more San Juan/Chama water, and we divert more than our 5,230 afy from the BDD by taking some of the water we have in storage. This is one alternative which would allow us to have water in the river and not pump the wellfields. She said there are tradeoffs in doing this, because that water is part of the bank account we're drawing from over the next 10-15 years. She said the emergency she sees where the Water Division would be concerned about meeting potable water demand, and be concerned about not putting water in the river, is a peak day concern. She said staff has worked diligently to understand what our peak days will look like, and what mix of supplies are available on a peak day. She said staff hasn't identified a maximum where we would run out of capacity for a peak day, unless it exceeds 17 million gallons per day. She said, if it did, then "I believe we would have to turn to the river and say, this isn't going to be possible for the next couple of days."

Ms. Borchert said peak day use is usually short in time. However, she doesn't have a solution to Councilor Ortiz's question about pumping groundwater. She said, most likely, unless directed by the Governing Body to use San Juan/Chama water, we would be pumping the 300 afy out of groundwater. She said, that being said, she thinks we will be pumping a lot less, noting the last time she looked at the portfolio, we were pumping about 2,200 afy out of groundwater, noting years ago, we used to pump 8,000 afy from groundwater. She said the quantify "we would be pumping if we pass this resolution is quite small compared to years in the past."

Councilor Ortiz said this is the reason some of the Councilors supported the building of the BDD and to have that on line. He said he well aware of "where we are as compared to where we were 8 years ago." He said his question is for this summer, is what language can be put into this Resolution to ensure that we are not drawing from the groundwater just so that we can have a bypass of the Water Treatment Plan. He said that plant should operate at as much capacity as possible, and if there is excess capacity, then we can let the bypass go through. If we don't have the excess capacity at the treatment plant, then we shouldn't turn to groundwater pumping to allow the River to flow maybe as far as Alto Park on one day when there is a pulse.

Councilor Ortiz proposed to further amend the Resolution as follows:

Page 4, line 3, "... Commission in an amount that shall not exceed 300 afy."

Page 4, add a sentence to Paragraph 3, on line 9: "The Water Division shall report to the Public Utilities Committee on how to deal with bypass flows on expected peak days during the summer of 2011."

MOTION: Councilor Ortiz moved, seconded by Councilor Wurzbarger, to adopt Resolution No. 2011-29, with Councilor Ortiz's proposed amendments.

DISCUSSION: Councilor Bushee said to be clear, we are doing this Resolution just for this year.

Councilor Ortiz said the Resolution was unclear, and this is the reason he put in the language.

Councilor Bushee said the title of the Resolution is for 2011. She said some of the questions and concerns she is hearing tonight are directed toward the ongoing potential for an ordinance.

Councilor Ortiz said no. He said if that ordinance had come before us, there would have been a lot more discussion, reiterating the Resolution is just about this summer.

Councilor Bushee said the pulses in situations such as these were to help the upper watershed vegetation sustain itself, and the reason we're aiming to do this in a drought year.

Mr. Drypolcher said the pulses are to beyond the upper watershed, and get through downtown, but it is unclear with the soil conditions just how far down river it would go. The intent is to get to Alto Park, beyond Alto Park and perhaps to the Barrio la Canada neighborhood. He said they looked at the 300 afy, two pulses of 7 cubic feet per second, which would last a week. He said reason for the week-long pulse is to wet the bed, and have enough duration and volume to get farther downstream. He said it is the trickle flow that we want to sustain for the upper reaches of the River, and it's the pulses that we want to get farther down the river for esthetic and social purposes as well as for ecological purposes, and to irrigate the plants and trees which we planted. He said to sustain that investment, they are looking at the river as irrigation for a long, linear park, in the way that we look at irrigating our parks.

Councilor Bushee said then the upper watershed will be fine with the trickle flows with the additional pulses, and Mr. Drypolcher said this is correct, and how they understand the flows to operate and perform.

Councilor Bushee said under this scenario, do we have predictions as to how far the flows could go.

Mr. Drypolcher said the predictions in the memo are believes to be accurate.

Councilor Bushee said she is speaking of these amendments.

Mr. Drypolcher said, "I'm seeing, 'shall not exceed 300 afy per year,' and dealing with the demand on peak days, I don't believe that will impact what we will be able to bypass, based on inflow and based on the terms of the Resolution."

Councilor Bushee asked if that is true even without pumping.

Mr. Drypolcher said that is a different consideration that he didn't hear in the amendment.

Responding to Councilor Bushee, Councilor Ortiz said he didn't propose that amendment, for now.

FRIENDLY AMENDMENT: Councilor Wurzbarger said, for purposes of what we have been discussing for months, the purpose of this Resolution is to give direction to staff to avoid groundwater pumping for this bypass overflow when an emergency has been declared. However, it is still left to staff to define an emergency. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER MEMBERS OF THE GOVERNING BODY.**

Councilor Bushee asked, for clarification, if we are not allowing any groundwater pumping for the 300 afy.

Councilor Ortiz said no. He said staff has to come up with a better definition of what an emergency means.

Councilor Wurzbarger said, "And it's only for purposes of this Resolution for this summer. And we'll have a different experience and we'll know, and we have everything on line."

Councilor Ortiz said this is the first year we've had to do this in a dry year.

Councilor Bushee said she still is not clear as to what we're passing tonight, in terms of allowing for flows and how far.

Councilor Ortiz said we are passing the Resolution, but we are asking staff to come up with a better definition for emergency, and we're not even talking about far it goes, we can't determine that.

Councilor Bushee asked what we think the definition of emergency is right now.

Councilor Ortiz said he believes it is pretty weak.

Councilor Bushee asked what is staff's understanding.

Mr. Drypolcher said the definition that is provided is in the Summary Recommendations on the first page, 5(a), which provides, "Flows may be adjusted or curtailed by the City Water Division in response to an emergency situation: to prevent an interruption in water service and to protect public health and safety."

Councilor Ortiz said under that definition, we never had an emergency during the drought of Summer 2002, when we were considering a moratorium.

Councilor Bushee asked Councilor Ortiz if he wants to tie it to drought stages.

Councilor Ortiz said we don't have those.

Councilor Bushee said we do, and we have them on the books.

Councilor Ortiz said he is in favor of adding Councilor Wurzbarger's sentence, because it requires us to hear from staff to come up with an operational definition of an emergency for this year for this bypass that is stronger than what is in this Summary Recommendation. He said if this was about the proposed ordinance, we would be going through this line by line.

Councilor Bushee hoped this would be an exercise for the upcoming ordinance in some way.

Councilor Ortiz doesn't believe that ordinance is coming forward anytime soon.

Councilor Chavez has the same concerns as Councilor Ortiz, and won't repeat those. However, he believes we need to be cautious in where we're going with this. He said we have reduced the amount of landscaping in our parks, because of the issues we experienced in the 2002 drought. He said his concern is the amount of planting being done in that channel and if it really is setting us up for failure later. We need to be careful in what and how much we plant, and where..

Councilor Ortiz agreed, saying if the plantings are unsustainable, it is a tight circle, because we have to allow bypass flows because of the plantings, and we have the plantings because we have this bypass flow.

Councilor Chavez said it is a conundrum, and some of the calls he has received are from people worrying about just that – trees that have been planted and there is no water, and what to do. He said we are talking way past the areas Mr. Drypolcher is suggesting that the flows would reach. He said we hope it will go as Patrick Smith, Alameda and perhaps to Barrio la Canada, but we really don't know. He said he questioned this last time, and thinks the 300 afy is a little better, but not much.

Councilor Calvert said we need to put this in perspective. He said we need to realize that 300 afy is roughly 3% of the total production for the year. He said he raised the issue of pumping groundwater 3 years ago, but that was before the BDD. He said one of the main reasons we moved forward with the BDD was to rest the groundwater supplies, with the understanding those groundwater supplies were our insurance for dry years, and this is one of those. He said we'll be pumping the wells more this year, whether or not we do the bypass, and 300 afy of what we'll be pumping isn't that much in comparison to the total.

Councilor Calvert said people talk about 2002 when we stopped watering the parks, and we saw that was a disaster and the expense to recover. He doesn't think we want to make the same mistake again when we have greenery and vegetation and other things in a riparian ecosystem running along the River. He doesn't believe this is much to ask.

Councilor Calvert said there is the other thing about people contributing water in the river on their water bill, commenting he believes that was sponsored by Councilor Ortiz. He said if that water can't be used for this purpose, he doesn't know what we will use it for. He said it doesn't buy 300 afy in perpetuity, but for one year, he believes people have paid for that amount of water. He said people also have conserved water to allow water to be in the river. He has heard from people that they don't mind conserving water, but they don't want all of it to go for building projects, and want to see some public benefit from that conserved water. He believes this is one of those purposes. He said we owe it to a sort of social contract in the

community to put some water in the River. He said it is a dry year, but we're only going to 1/3 or less of the requested 1,000 afy, and believes the City can manage that.

Councilor Calvert said Ms. Borchert's definition of an emergency is when we can't meet peak day demand, and we are going to meet that by getting water in storage to meet that demand, noting it doesn't all have to be produced that day. It would have to be produced in advance and stored to be used when it is demanded. He said the total production wouldn't meet our peak day demand, if you remove the Canyon Road Water Treatment Plant.

Ms. Borchert said they can adjust the production for peak day with our wells, as well as increase the Canyon Road demand quickly. She said in some sense, we prepare for a peak day every day, because we try to keep our tanks as full as possible. However, peak day is completely unpredictable, and usually is weather-driven. She said there is not a direct connection between stopping the flow in the river and ramping up production to meet peak day demand.

Councilor Calvert asked how much staff is planning to use the well field for the summer.

Ms. Borchert said this summer we will be peaking off the well field, noting the production from all City wells is approximately 2,500 afy, and the majority of that will occur in the summer.

Councilor Calvert said part of the intention for the wells is for use during dry years, because sufficient water isn't available from other sources, and Ms. Borchert said, "Correct."

Councilor Romero said she is more in agreement with the direction Councilor Ortiz put into the Resolution with the changes, and it is clear that it is only for 2011

FRIENDLY AMENDMENT: Councilor Romero asked to amend the motion to have reports on the water to be given at the Public Works Committee. **THE AMENDMENT WAS FRIENDLY TO THE MAKER AND SECOND, AND THERE WERE NO OBJECTIONS BY THE OTHER COUNCILORS.**

Councilor Trujillo asked if the water fund for River, if that money is going to feed water to the River.

Councilor Ortiz said we were supposed to purchase water rights with those funds.

Ms. Borchert said yes, and they are open to buying water rights with that money, noting she understands the balance is approximately \$150,000. However, there are no water rights for sale on the Santa Fe River. She said the ordinance does permit the City to lease water rights, and there is some promise in leasing water rights from the acequias with these funds. She said to date, none of the funds have been spent, because "we haven't found the right fit for the use of that money."

Councilor Trujillo said in 2002 a decision was made to let the parks die, which he hops we never do again, noting we have made a terrific investment with the Parks Bond proceeds. He said his concern is that we are going to water all the trees on the river, and let them grow nice and big. He said along the River near La Cienega below the Treatment Plant, there is damage to the trees by huge beavers, at least 10 of them.

He supports the Living River, but he is torn between giving water to the river or to his constituents. He doesn't know what the summer will be. He said there are problems in Las Vegas, but he doesn't think that will happen here because we do have the BDD. He said he has been contacted by a lot of people whose main concern is if the City is putting water in the River for tourists, so they can see how pretty it is. He said very few locals go to the river, unless it is for the fishing derby, but that won't happen this year. However, he is willing to sacrifice the fishing derby to give water to the people. He said we can do it next year if there is a good snow pack and monsoons. He said he is in support of Councilor Ortiz's amendments.

Councilor Bushee said these discussions around the living water, are similar to those during the discussion of the Living Wage. She said we aren't going to create a living river. She said there has been discussion that Santa Fe exists because the River was here. She asked at what point do we recognize that some of the water belongs to the River. She said she lives near the River and revels in seeing children and families playing in the River when there is spill-over and it is raining and the River runs. She said we deal with the political realities when people call us and asked what we are doing in letting water run down the river and we are in a drought. She said we may have monsoons in July, but we are nowhere near the situation of Las Vegas, which has enormous infrastructure problems in terms of sufficient potable water. She understands we are talking about one year. She hopes we don't lose sight of the River and the possibility of a living river on very few occasions for short periods of time. She thinks we need to expand the dialogue on water needs to include the River. She said it will be interesting for the staff to respond to help allay some of the political fears she hears being expressed tonight.

Councilor Chavez asked who is monitoring the planting along the River channel.

Mr. Drypolcher said he is, but it isn't a scientific monitoring program, but there is a River Ecosystem Restoration Initiative grant from the State, and they have been doing some plantings under the terms of that grant. There are other entities monitoring, noting the Santa Fe Watershed Association is monitoring the life of the plants over time, as are the Wild Earth Guardians, as well as the community. He hears from people using the River Trail as to what's working, what's not, and how the plants are performing over time.

Councilor Chavez said, for this year, knowing we may be facing a severe drought, he is suggesting that we not plant any more, and just maintain and monitor what we have. He asked if we can do that.

Mr. Drypolcher said the current contract for work along the River, the best time for planting is during plant dormancy. He said over the next 12 months they will be doing plantings as part of the River Restoration Project below Camino Alire, noting this is the current plan.

Councilor Chavez said we don't know if we can get water down there.

Councilor Bushee said the river bank is falling down in that area, and Councilor Chavez said that has been happening for 30-40 years.

Councilor Bushee said it can be stabilized with the plantings.

Mr. Drypolcher said some of the planting which can be done, and based on local conditions at that point, and the plants do or not make it. He said this has been a very successful approach over time in establishing areas of new planting along the River.

Councilor Chavez said it doesn't make sense to plant anything else, and they should just maintain what is there.

Councilor Wurzbarger said all over town, people were concerned that the plants were killed and they are not replanting, because we've been advising them of the summer we are going to have. She understands what Mr. Drypolcher is saying, but if you're going to plant and not water, why are we worried about getting water down the River

FRIENDLY AMENDMENT: Councilor Wurzbarger would like to amend the motion to provide that there will be no planting until after August, so we aren't watering plants that might not make it with water we may or may not have. **THE AMENDMENT WAS FRIENDLY TO THE MAKER OF THE MOTION.**

Mayor Coss said plantings are done in the Fall.

Councilor Wurzbarger said Mr. Drypolcher didn't say that, but was saying just let it go and hope that it works out, and "if they don't survive, they don't survive."

Mr. Drypolcher said the planting currently planned would be during the coming winter in December and January.

WITHDRAWAL OF THE FRIENDLY AMENDMENT: Councilor Wurzbarger withdrew her friendly amendment.

Mayor Coss asked Councilor Wurzbarger to explain her friendly amendment regarding groundwater.

Councilor Wurzbarger said it was as follows: It is the purpose of this Resolution to avoid groundwater pumping for the bypass flow in the event of an emergency. She said we are trying to tie the pumping to the emergency, and staff would have to advise us of that.

Mayor Coss said in the Memo they say they are expecting to pump about 2,500 afy feet of water, which less than is half of what we pumped last year.

Councilor Wurzbarger said she isn't making this recommendation based on what we have done before. She said she is making the recommendation based on what we don't know about now. She said this is the first time we've had all of these variables, and she would argue that this is a prudent way to look at what we're doing this summer. She said many of us aren't concerned about a definition of emergency, and she is willing to work with this to see what happens this summer. She wants staff to have the authority under the stated purpose of not pumping groundwater for this if we're down so low it would cause a problem. She said perhaps we may need the 2,500 afy to make up the deficit if the water goes very low.

Mayor Coss said he is presuming from the Memo that they are planning to pump up to 2,500 afy of groundwater this year.

Councilor Wurzbarger asked what happens if they need to pump 3,000 afy, and asked do we pump more so we have water in the river, commenting she just doesn't know what is going to happen.

Mayor Coss said he is hopeful the Resolution will pass and that we will dedicate 300 afy this year to the River. He said, as Councilor Bushee said, we are in a much, much, much different situation than Las Vegas. He said we are in no danger of telling people they can't water their roses, or take a long shower. He said we can produce that water. We have reservoir source, two groundwater sources, and now a brand new state-of-the-art Buckman treatment facility. He said we've had 1,000 afy in our Long Range Plan for several years, and this is the year that tests it. He can we could cut a lot of things to get 300 afy more – not water parks which everyone agrees is a mistake, ask for severe water conservation and declare an emergency, but we don't have to or need to do that. He said this community stepped up to the plate, spent the money, built the projects, and all along has talked about wanting to have a living River. He said Councilor Bushee is correct that we aren't that, and we're not even sure what that means, but we know it takes a little bit of water and this is a little bit of water.

Mayor Coss said the River is just as important to the community as its parks or any other feature, and he finds it interesting that in Santa Fe we would discount esthetics. He said Santa Fe makes its living on esthetics in a lot of ways. He said, setting esthetics aside, there are historic, cultural, economic and ecological reasons to make our River healthier than it is now. He said all of the kids in the poster contest will identify what a living River is long after we are gone. He said we want it to get better, and he commended the staff, the Water Association and the hundreds of people that came out and participated in this to move it a little further along. He said this doesn't endanger anybody's water supply or their yard and such, but it will help our River, and it is one step along the way.

Councilor Calvert said he is still unclear on Councilor Wurzbarger's amendment, because in the amendment is uses a word she doesn't think has been defined, and asked how he is to understand what that means.

Councilor Wurzbarger said staff will come back with this when there is an emergency with a definition then and tell us what is going on, but it is not a blanket "yes we'll do 300 afy no matter what happens." It does move us forward to the objective which has been outlined so eloquently by the Mayor.

Councilor Calvert asked Councilor Wurzbarger if her amendment "doesn't say we won't be allowed to use groundwater for the 300 afy. It doesn't say that."

Councilor Wurzbarger said it doesn't say, except in an emergency which would have to be defined. She said, "And if it were an emergency, then yes indeed I'm saying we won't be using groundwater for this purpose, as we will be saying for many other things in the community if that happens."

VOTE: The motion, as amended, was approved on the following Roll Call vote:

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

Against: Councilor Chavez

Explaining his vote: Councilor Chavez said, "I'm going to vote no. I think there might be merit to some idea of a living river, but I think we have to look for methods, other than plantings, to stabilize those banks, because planting depends on more and more water that we may not have. So, I hope that the River Commission looks at that, and that's going to be part of the ongoing problem and solution that we're facing. So, I'm going to have to vote no at this time.

Explaining his vote: Councilor Ortiz said, "I think we have, not just a social contract, we have an actual contract with the ratepayers of our water company. If memory serves me correctly, a household takes 0.19 a year, in terms of supplying. And so, if you multiply 5 x 300, this bypass is potentially affecting 1,500 homes, that's 1,500 constituents. And so, there is a practical financial result by bypassing the production of water from our surface water facility. And the reason why we had the problem in 2002 when our parks died, is because that Governing Body had the short-sighted intention to pass an ordinance that said the City will follow any emergency states that we had, and they put it in an ordinance form, and because of that, our parks died. And my hope is that the River Commission, in contemplating an ordinance similar doesn't make the same mistake and try and legislate some kind of social esthetic value, and instead, looks to the practical results that our water has been serving this community, by serving this community, not just letting it trickle down to Patrick Smith Park. And so I think these amendments get us there, and it requires staff to give us a better operational definition so we have better control over our utility, and so I vote yes.

Explaining her vote: Councilor Bushee said, "The irony is that the neglect of our River for a long time, the River has eroded an inch a year for 30 years. It's a channel, and to bring it back to life, you have to stabilize the banks. If you look at what Forest Guardians did in the La Cienega area, it's a healthy ecosystem. We cannot achieve that any time soon on our channelized, most endangered River, one of the most endangered Rivers in the nation. But, you have to start somewhere. I will vote for this, and hope this is a start, but nobody's looking at the long term sustainability or reclamation or reliving of our River in the thinking we're having tonight."

END OF CONSENT CALENDAR DISCUSSION

11. **REQUEST FOR APPROVAL TO PUBLISH NOTICE OF PUBLIC HEARING ON JUNE 8, 2011: BILL NO. 2011-17: AN ORDINANCE AMENDING ORDINANCE NO. 2009-15 THAT AUTHORIZED THE SALE OF REAL PROPERTY LOCATED ADJACENT TO 312 CATRON STREET IN ORDER TO AMEND THE TERMS OF THE SALE SPECIFIC TO THE TIME AND MANNER OF PAYMENT (COUNCILOR ROMERO). (EDWARD VIGIL). (Postponed at April 27, 2011 City Council Meeting)**

Mr. Vigil said he is here this evening to explain how this effort will benefit not only the City, but also Dr. Oti, by providing him a method of purchasing this property, since he's been unable to acquire financing by normal means because of a depressed economy.

Councilor Romero commended Mr. Vigil for working on this, because it was somewhat different from other situations. She said Dr. Oti is here to answer any questions. She said she believes all of the Councilors' concerns have been addressed. She appreciates that this item was postponed at the last meeting, and she has the opportunity to move this forward. She said this is a very small sliver of land which is, in many ways, an anomaly. It has an opportunity to benefit the City and that corner.

MOTION: Councilor Ortiz moved, seconded by Councilor Romero, to approve this request.

DISCUSSION: Responding to Councilor Bushee, Councilor Ortiz said this is just a request to publish the title of the Ordinance, and we will discuss it on June 8, 2011.

Councilor Bushee said she still has the same concerns as she did in Committee, that the City will be the bank in this scenario, noting this has never been done to her knowledge, and "I don't think it's something we should begin as a precedent, and so I would actually vote no against publishing this." She said it has gone to committees, and we've said "lease it, buy it, but the City should not act as the bank in order for him to be able to buy it, so I'm going to vote no."

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

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

Against: Councilor Bushee.

12. **CONSIDERATION OF RESOLUTION NO. 2011- 29 (COUNCILOR ORTIZ, COUNCILOR TRUJILLO, COUNCILOR CHAVEZ AND COUNCILOR DOMINGUEZ). A RESOLUTION ENDORSING THE REQUEST OF THE FRIENDS OF THE PECOS HISTORICAL PARK TO THE UNITED STATES POSTAL SERVICE TO ISSUE A COMMEMORATIVE STAMP HONORING THE SESQUICENTENNIAL ANNIVERSARY OF THE BATTLE OF GLORIETA PASS AND RECOGNIZING THE IMPORTANCE OF THE BATTLE OF GLORIETA PASS. (MELISSA BYERS)**

MOTION: Councilor Ortiz moved, seconded by Councilor Chavez, to adopt Resolution No. 2011-29.

DISCUSSION: Councilor Ortiz noted that one of Councilor Chavez's ancestors was the leader of the 200 volunteers that fought the Texans and sent them home. He said his ancestor needs to be recognized.

Ms. Byers said she spoke with the City Historian who felt he didn't have enough time to do research, but he did mention that Councilor Chavez's ancestor was part of the Battle of Glorieta. She said Mr. Garcia

said he would like to plan to do something in 2012 to commemorate the Battle of Glorieta Pass.

Mayor Coss asked the anniversary of the battle.

Ms. Byers said it is March 2012.

Mayor Coss said then we have time, noting this was a very important battle. He commented that we now invite Texans to come here and we don't send them home, noting he is married to a Texan.

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

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

Against: None.

Explaining his vote: Councilor Calvert said, "Yes, and I'd like to be added as a sponsor, and offer that in my limited capacity with the Postal Service, I would be willing to help out if I can."

13. MATTERS FROM THE CITY MANAGER.

There were no matters from the City Manager.

14. MATTERS FROM THE CITY ATTORNEY

There were no matters from the City Attorney.

15. MATTERS FROM THE CITY CLERK

There were no matters from the City Clerk.

16. COMMUNICATIONS FROM THE GOVERNING BODY

A copy of "Bills and Resolutions scheduled for introduction by members of the Governing Body," for the Council meeting of May 11, 2011, is incorporated herewith to these minutes as Exhibit "1."

Councilor Bushee

Councilor Bushee said she has no communications.

Councilor Calvert

Councilor Calvert introduced an Ordinance regarding the definition of distress merchandise sale. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "2."

Councilor Calvert reminded everyone in the community, that Saturday is the National Association of Letter Carriers annual food drive. He said they would appreciate everyone's participation, especially this year when people are having a harder time because of the economy, noting some of the food banks have been especially hard hit, and certainly need to be replenished.

Councilor Calvert congratulated the St. Michael's Golf Team, who won second in the State by only one stroke, but it was a great effort. He congratulated Marty Sanchez placed second overall in the individual competition in the State, noting he was the champion last year.

Councilor Dominguez

Councilor Dominguez said he spoke with Mr. Romero about making sure we are doing what we can to address the issues we are having on the Plaza. He said he received one call early in the week, then later received 4-5 calls from locals who were downtown who were surprised at what is happening downtown. He said he knows Mr. Romero has talked with staff about this, and hopefully he can come up with a plan that will be successful in dealing with some of the issues.

Councilor Dominguez said the Santa Fe Beautiful Golf tournament is scheduled on Friday, and thinks perhaps Marty Sanchez might be there.

Councilor Dominguez said we are getting closer to prom and graduation, and asked Mr. Romero to remind the Police Department to see that our kids and community are safe, and to regulate some of the bad things which happen in communities.

Councilor Wurzbarger

Councilor Wurzbarger introduced the following:

1. A Resolution authorizing the transfer of Enterprise Funds to the General Fund. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "3."
2. A Resolution authorizing the temporary modification to the requirements of the Santa Fe Homes Program; and authorizing a 70% reduction in fees associated with small subdivisions with two through ten total units, noting it will go to Finance, Public Works and Council. She said this is an effort to continue to try to do something to jump-start the housing industry in the affordable area. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "4."

Councilor Trujillo

Councilor Trujillo said he received a call about Paseo de Enrique, which was annexed last year, and the County had been taking care of the road. The residents say the road hasn't been graded. He asked Mr. Romero to check on this, saying he thinks it is under City jurisdiction now.

Councilor Trujillo said he has had complaints about the Ragle Park outfield, the T-Ball fields, and asked Mr. Romero if he can put some more dirt out there, because of the ruts.

Councilor Trujillo said, regarding graffiti, a lot of places on and near Siringo Road have been tagged, and he would like the police to go out there and take pictures, and to get it cleaned up as soon as possible.

Councilor Trujillo said, with regard to the relocation of prairie dog, people are being fed because they're being relocated. He said he wants to be sure they are going to be relocated.

Councilor Trujillo congratulated his daughter Christiana who will have her first communion on Sunday.

Councilor Ortiz

Councilor Ortiz said he understands Santa Fe High is having its prom at Buffalo Thunder, and not at the Convention Center.

Councilor Ortiz said he wants to echo what Councilor Trujillo mentioned about the prairie dogs. He said there is a colony of very brave and cavalier prairie dogs at the GCCC just before you walk in. He said he requested some time ago for a change in policy or a change in the ordinance to allow for removal of prairie dogs even during the grace period, especially when endangering the public health, safety and welfare, especially children. He said when he went to the GCCC last, there were two children who ran to pet the prairie dogs because they were too little to understand it is dangerous to do so, noting their mother caught them in time. He said he would like a proposed ordinance change from Fabian Chavez, or some direction that we are going to relocate these prairie dogs.

Councilor Ortiz said will be drafting a resolution for introduction at the next meeting, noting he will discuss it with Ms. Byers.

Councilor Chavez

Councilor Chavez would like to work with staff to organize two district meetings in anticipation of redistricting, as it applies to the City. He said the State is going through its process.

Councilor Ortiz noted the resolution he was going to introduce, and then dropped because of the City Attorney was to resurrect it or appoint a committee. He said he is supposed to get an update from the City Attorney and City Clerk before he proceeds with introducing it.

Councilor Chavez said he didn't intend to pre-empt Councilor Ortiz, but he is trying to anticipate what the public might be thinking.

Councilor Ortiz understand there was to be a public process so our districts are set by July, so perhaps it is a matter of getting an update and timeline from the City Attorney and City Clerk, reiterating he had a resolution, but withdrew it after talking with staff.

Councilor Chavez asked for an update from the City Clerk.

Yolanda Vigil, City Clerk, said the City has contracted with Research & Polling from Albuquerque, which will allow for public hearings which will be before the Governing Body.

Councilor Chavez said he is speaking of holding meetings in the districts, not public hearings before the City Council when the maps are already drawn. He believes the contractor will know where the lines are to be drawn, and his idea was to go out to the public with that information, even preliminary information, and solicit public input.

Mr. Zamora said there is the opportunity for public meetings as described by Councilor Chavez, at discretion of Governing Body – when, where and how many. He said the contractor's appearance at those meetings as well as staff, isn't included in the contract, because it was a high dollar item to add public meetings for the contractor. Mr. Zamora said in the last month, the contract went out for bid, and there were two respondents, and Research and Polling was the lowest bidder and met all minimum qualifications in the bid process.

Councilor Chavez said he appreciates this information, and this is the reason he is requesting district meetings now, separately and in addition to what is or is not included in the contract. He knows this will be more work for staff, and this will be in addition to what the contractor is hired to do. He said there is a short window, and believes it would be prudent for the City to go out to the public with the information ahead of time, as much as possible.

Mr. Zamora said there will be an agenda item as they come forward to the Governing Body to set the schedule and the manner in which this input should be received, and this will be a matter to be decided by the Governing Body in an open meeting. He said he appreciates this input at this point in time, but setting the schedule will be something that needs to be decided with an agenda item.

Councilor Chavez said he is speaking of something which be separate from that schedule. He said he would like to hold two meetings in District 3, once Mr. Zamora has met with the contractor, which will be scheduled separately and in addition to the meetings the contractor will be doing. He said these need to be coordinated and scheduled with that work, reiterating he is requesting 2 meetings in District 3 to discuss redistricting for the upcoming redistricting by the City.

Councilor Romero said it seems that it isn't in the budget for the contractor. She would like to do this in all of the districts, and the Councilors from the 4 districts could host through the staff. She said she likes Councilor Chavez's idea to take it to the neighborhoods to vet some of the ideas which will be brought forward by the consultant. She wants to be sensitive to the limited budget. She said there may be a different way of doing the outreach which is planned, and she would advocate for District 2 to have something similar, once we have information. She said she would like suggestions from the public, so when the consultant presents its ideas, we can look at this and come up with something equitable for all districts. She would like to do this sooner, rather than later.

Councilor Chavez said District #3 historically, more than the other Districts, always has triggered redistricting, commenting that he isn't saying only District 3 should be having these meetings. He said we should go out to all of the Districts. He said the proposal by the consultant doesn't include the outreach to the community that we need in this case.

Mr. Zamora said what he meant to convey is when staff comes to the Council for the first time on redistricting, staff will include a plan for public meetings and input.

Councilor Chavez asked when the first meeting on redistricting will be held.

Mr. Zamora said he will get back to Councilor Chavez with this information.

Councilor Romero

Councilor Romero said at the corner of Alameda and Cathedral, the sidewalk was repaired, but it doesn't quite meet the road. She asked Mr. Romero to follow-up on the sidewalk.

Councilor Romero asked Mr. Romero to contact Randall Kippenbrock, from SWMA, noting they have been trying to determine the aggregate materials and there may be interest from the DOT for us to use some of those materials on the rail trail. She said they are trying to be creative.

Councilor Romero welcomed the Vineyard Christian Community to the neighborhood, noting they recently purchased the Berean Baptist Church. It is a very large congregation which serves the community, and also serve meals to the homeless. She said it is a different environment, but she is happy to see the church building being used by this group.

Mayor Coss

Mayor Coss introduced a Resolution directing staff to establish a formalized process to set minimum levels of cash reserves in various funds, cosponsored by Councilors Ortiz, Wurzbarger, Bushee, Romero and Dominguez. Councilors Calvert and Trujillo asked to be shown as cosponsors. A copy of the Resolution is incorporated herewith to these minutes as Exhibit "5."

END OF AFTERNOON SESSION AT APPROXIMATELY 7:00 P.M.

EVENING SESSION

A. CALL TO ORDER AND ROLL CALL

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

Members Present

Mayor David Coss
Councilor Rebecca Wurzbarger, Mayor Pro-Tem
Councilor Christopher Calvert
Councilor Miguel Chavez
Councilor Carmichael A. Dominguez
Councilor Matthew E. Ortiz
Councilor Rosemary Romero
Councilor Ronald S. Trujillo

Members Excused

Councilor Patti J. Bushee

Others Attending

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

F. PETITIONS FROM THE FLOOR

A copy of a Webmail regarding "City Council Denies Cell Tower Application – Albany, CA," dated May 11, 2011, entered for the record by Mary Layne, is incorporated herewith to these minutes as Exhibit "6."

David McQuarie said in 2004, the Depart of Justice ordered accommodations for public buildings, and the City got a plaque. He said as part of that, the City agreed to update the Transition Plan within a certain time. He said there was a specific timeline for certain items to be done. He said this has not been done, and those will be coming forward in the next month. He said this was a \$1 million budget item, and now \$10-12 million. He said look closely at the items, what it will cost and the time line. He said please be aware.

Mary Layne asked if this is for the evening session and Mayor Coss said yes. This is a time for the public to speak to things that aren't on the agenda this evening. Ms. Layne provided copies of Exhibit "6" for the Governing Body, saying she think it will be of interest to the Governing Body. She said she

received an email as well. She said it is something from California. The City Council in Albany, California denied a cell tower application and she thinks that is wonderful, and something that is going to be happening more and more across the United States, and "I thought you could get in on the first wave." Ms. Layne read from the article. Please see Exhibit "6" for specifics of this presentation. She said those of us who are here represent a lot of people who can't show up. She asked that this Governing Body read the article and possibly contact the Councilors in Albany, to see how they are dealing with all of this. She thinks it would be great if "all of you guys banded together and denied a bunch of things."

G. APPOINTMENTS

There were no appointments.

H. PUBLIC HEARINGS

1) REQUEST FROM CASA CHIMAYO, LLC, FOR THE FOLLOWING:

- a) PURSUANT TO §60-6B-10 NMSA 1978, A REQUEST FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT CASA CHIMAYO, 409 W. WATER STREET WHICH IS WITHIN 300 FEET OF OUR LADY OF GUADALUPE CHURCH, 417 AGUA FRIA;**
- a) IF THE WAIVER OF THE 300 FOOT RESTRICTION IS GRANTED, A REQUEST FROM CASA CHIMAYO, LLC, FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISE CONSUMPTION ONLY) TO BE LOCATED AT THE CASA CHIMAYO, 409 WEST WATER STREET, SANTA FE.
(YOLANDA Y VIGIL)**

The staff report was given by Yolanda Y. Vigil, City Clerk, noting the business is within 300 feet of Our Lady Guadalupe Church. She said there is a letter in the packet dated February 3, 2011, from the Rev. Tien-Tri Nguyen, Pastor, the Shrine of Our Lady of Guadalupe, stating that they have no objection to this request. She said there are memos in the packet regarding litter, noise and traffic, and staff recommends this business be required to comply with the City's Litter and Noise Ordinances.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to grant the request for the waiver of the 300 foot location restriction to allow the sale of alcoholic beverages at Casa Chimayo, LLC, 409 W. Water Street.

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

For: Councilor Calvert, Councilor Chavez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

Absent for the vote: Councilor Dominguez.

MOTION: Councilor Calvert moved, seconded by Councilor Romero, to approve the request from Casa Chimayo, LLC, for a Restaurant Liquor License (Beer and Wine On-Premise Consumption Only) to be located at Casa Chimayo, 409 West Water Street, Santa Fe.

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

For: Councilor Calvert, Councilor Chavez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: None.

Absent for the vote: Councilor Dominguez.

- 2) **REQUEST FROM GOLER FINE IMPORTED SHOES FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE DISPENSING/CONSUMPTION OF WINE AT GOLER FINE IMPORTED SHOES, 125 WEST PALACE AVENUE, WHICH IS WITHIN 300 FEET OF THE CATHEDRAL BASILICA OF ST. FRANCIS OF ASSISI, 131 CATHEDRAL PLACE. THE REQUEST IS FOR A RECEPTION TO BE HELD ON MAY 14, 2010, FROM 12:00 P.M. TO 4:00 P.M. (YOLANDA Y. VIGIL).**

A letter dated May 10, 2011, to Sir or Madam, from the Rev. Father John B. Trambley II, Associate Rector, is incorporated herewith to these minutes as Exhibit "7."

The staff report was presented by Yolanda Y. Vigil, City Clerk, saying the business is within 300 feet of the Cathedral Basilica of St. Francis of Assisi, noting there is a letter in the packet from Rev. Father Trambley stating they are not in opposition to this request.

Public Hearing

Speaking to the request

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Calvert moved, seconded by Councilor Wurzbarger, to approve the waiver of the 300 foot location to allow the dispensing/consumption of wine at Goler Fine Imported Shoes, 125 West Palace Avenue, which is within 300 feet of the Cathedral Basilica of St. Francis of Assisi, 131 Cathedral Place, at a reception to be held on May 14, 2010 from 12:00 p.m. to 4:00 p.m.

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

For: Councilor Calvert, Councilor Chavez, Councilor Dominguez, Councilor Ortiz, Councilor Romero, and Councilor Wurzbarger.

Against: None.

Absent for the vote: Councilor Trujillo.

- 3) **REQUEST FROM THE CENTER FOR CONTEMPORARY ART (CCA) FOR A PERMANENT WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE DISPENSING/SALE OF ALCOHOLIC BEVERAGES FOR ART OPENING AND FUNDRAISING EVENTS HELD AT THE CENTER FOR CONTEMPORARY ARTS (CCA), 1050 OLD PECOS TRAIL, WHICH IS WITHIN 300 FEET OF ST. JOHN'S UNITED METHODIST CHURCH, 1200 OLD PECOS TRAIL, THE IMMANUEL LUTHERAN CHURCH, LCMS, 209 EAST BARCELONA ROAD AND THE TEMPLE BETH SHALOM, 205 EAST BARCELONA ROAD. (YOLANDA Y. VIGIL)**

- a) **REQUEST FROM THE CENTER FOR CONTEMPORARY ARTS (CCA) FOR THE FOLLOWING: (ONLY IF H-3 IS NOT APPROVED)**

REQUEST FROM THE CENTER FOR CONTEMPORARY ARTS (CCA) FOR A WAIVER OF THE 300 FOOT LOCATION RESTRICTION TO ALLOW THE DISPENSING/SALE OF ALCOHOLIC BEVERAGES AT THE CENTER FOR CONTEMPORARY ARTS (CCA), 1050 OLD PECOS TRAIL ON MAY 13, 14; JUNE 4, 11, 18, 25; JULY 8, 9 AND AUGUST 5, 2011. (CRAIG ANDERSON AND YOLANDA Y. VIGIL)

A Memorandum dated May 11, 2011, with attachments, to Mayor Coss and City Councilors, from Yolanda Y. Vigil, City Clerk, regarding this request, is incorporated herewith to these minutes as Exhibit "8."

The staff report was presented by Yolanda Y. Vigil, City Clerk, saying the business is within 300 feet of St. John's United Methodist Church, Immanuel Lutheran Church and its pre-school, and Temple Beth Shalom and its pre-school. She said there are letters in the packet from each of the churches and the pre-schools, indicating they have no objection to this request.

Public Hearing

Speaking to the request

There was no one speaking for or against this request.

The Public Hearing was closed

MOTION: Councilor Wurzbarger moved, seconded by Councilor Romero, to grant the permanent waiver of the 300 foot location to allow the dispensing/sale of alcoholic beverages for art opening and fundraising events held at the Center for Contemporary Art (CCA), 1050 Old Pecos Trail.

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

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

Against: None.

Absent for the vote: Councilor Calvert.

4) REQUEST FOR APPROVAL OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ANNUAL ACTION PLAN FOR FISCAL YEAR 2011/2012. (KIM DYCOME)

The staff report was presented by Kim Dycome, saying she hopes the Council received the amended numbers. She said the HUD has issued the actual amount of the grant which is \$524,964, and the additional funds were allocated as follows: \$10,000 for home improvement, \$1,600 for down-payment assistance with the Housing Trust, \$10,000 for Stagecoach, and additional funds for the two public services, and "we subtracted some administration to make those numbers even." She said the CDC approved the Plan on April 27, 2011.

Public Hearing

There was no one speaking for or against this request.

The Public Hearing was closed

Councilor Ortiz said he has a question regarding the allocation to United South Broadway to provide legal assistance and counseling. He said for at least 3 years, the First Judicial District Court has been offering *pro bono* foreclosure assistance. He said Celia Ludi is the administrator for the Courts. He asked how this wound up with United South Broadway.

Ms. Dicome said United Broadway South is opening a satellite office in Santa Fe with an attorney who is a resident of Santa Fe, so that people needing assistance don't have to drive to Albuquerque. She said she knows nothing of Ms. Ludi, noting this was an application and what the CDC reviewed.

Councilor Ortiz asked if we did anything to get the other program involved.

Ms. Dicome said no. The attorney had been doing *pro bono* work and approached the CDC, and she told the attorney she couldn't do it as an individual, and would need to do the work through a non-profit. The attorney approached a local organization who didn't want to do it, and so she went with United South Broadway. She said the attorney is Kelly Hutchinson, and will be in Santa Fe and serving low to moderate income strictly.

Councilor Dominguez noted on the first page of the narrative responses, Carry-Forward Funds are listed for \$220,000, and asked if these are funds which weren't spent from the last cycle.

Ms. Dicome said there was a mid-year allocation for some program income from the Revolving Loan Fund, and a few of the contractors know they couldn't build and expend all their funds through June 30, 2011, so their contracts run until June 30, 2012, noting there are only a few of these.

Councilor Dominguez said then these funds already are allocated.

Mrs. Dicome said yes, noting there is a small amount of down payment assistance and administrative.

Councilor Dominguez asked if the citizen participation and consultation process on page 4 was written in anticipation of approval.

Ms. Dicome said yes, noting she prepares it as if it is going straight to HUD.

Councilor Dominguez asked if is factual where she said there were no comments or views not accepted.

Ms. Dicome said this is correct, and she can change this if there is comment, but there have been none since it was published on April 15th, in English and in Spanish.

Councilor Dominguez is unsure how this Governing Body looks at the detail of past funding amounts, and such, noting he doesn't find this information in the packet.

Ms. Dicome said it isn't included because this is HUD's format.

Councilor Dominguez asked if that information could be incorporated in future reports, as an additional piece of information. He said he would like to see what has been allocated and try to determine the success or lack of success of entities which were funded.

Ms. Dicome said she can provide that information, noting there has been a running tab of funding since 1997, and she can email that to the Mayor and Council.

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

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

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

Against: None.

Mayor Coss asked Ms. Dicome to thank the staff and the members of the Community Development Commission.

[STENOGRAPHER'S NOTE: Cases were combined for purposes of presentation and discussion, but were voted upon separately; and one public hearing was held on all items as follows: H(5)(a) and H(5)(b); and H(6)(a), H(6)(b) and H(6)(b) [See Exhibit "10"].

5) TELECOMMUNICATIONS APPEALS – CASE #2011-15A AND CASE #2011-15B:

- a) **CASE #2011-15A.** CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE DECEMBER 21, 2010 DECISION OF THE CITY OF SANTA FE BOARD OF ADJUSTMENT IN CASE NO. 2010-148, APPROVING THE AUGUST 18, 2010 DECISION LETTER ISSUED BY THE CITY OF SANTA FE LAND USE DEPARTMENT FOR CERTAIN MODIFICATIONS TO AN AT&T TELECOMMUNICATIONS BASE STATION LOCATED AT PASEO DE VISTAS, IDENTIFIED AS SITE NO. S205. (DAN ESQUIBEL) (KELLEY BRENNAN)

- b) **CASE #2011-15B. CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE DECEMBER 21, 2010 DECISION OF THE CITY OF SANTA FE BOARD OF ADJUSTMENT IN CASE NO. 2010-149, APPROVING THE AUGUST 18, 2010 DECISION LETTER ISSUED BY THE CITY OF SANTA FE LAND USE DEPARTMENT FOR CERTAIN MODIFICATIONS TO AN AT&T TELECOMMUNICATIONS BASE STATION LOCATED AT 1214 CAMINO CARLOS REY, IDENTIFIED AS SITE NO. S215. (DAN ESQUIBEL) (KELLEY BRENNAN)**

A Memorandum dated May 2, 2011, with attachments, to the Mayor and City Councilors, from Kelley Brennan, Assistant City Attorney, regarding Case No. 2011-15A – Site S205, 1686 Paseo de Vistas [formerly Case #2010-148], and Case No. 2011-15B – Site S215, 1214 Camino Carlos Rey [formerly Case #2010-149], is incorporated herewith to these minutes as Exhibit "9."

A copy of the order of appeals, prepared and submitted for the record by Kelley Brennan, is incorporated herewith to these minutes as Exhibit "10."

A copy of "City Council Appeals," for Case #2011-15A and Case #2011-15B, submitted for the record by Arthur Firstenberg, is incorporated herewith to these minutes as Exhibit "11;" and a second copy of his statement, which he wanted to substitute for the first one because it has his handwritten notes which he says he added to the statement he read into the record, is incorporated herewith to these minutes as Exhibit "11-A."

Kelley Brennan, Assistant City Attorney, said there are five (5) appeals before the Governing Body and they are grouped into two groups. The first are the appeals on two base stations, and the second are three (3) appeals relating to the construction of a stealth tower, or tower alternate, at St. John's Methodist Church on Old Pecos Trail.

Ms. Brennan noted she passed out copies to the Governing Body and the Appellants and Appellees an order of appeals [Exhibit "10"], so we can hear the statements and ask questions on each one and have a single public hearing at the end where people can comment on all the appeals as they please, in the interest of efficiency.

Ms. Brennan said she will present a brief introduction on each of the groups, and in the first group, the Base Station Appeals, the Appellant, Arthur Firstenberg, the representative of the Cellular Phone Task Force, will make a statement. If Mr. Firstenberg has witnesses, he would produce those witnesses at that time. The Appellee would then make a statement, noting the Appellee is represented by Peter Dwyer, Esq., in these cases, who would introduce any witness he would have.

Ms. Brennan said the first two cases are base stations, and the work done to the antennas was replacement. No new antennas were added in either of these projects. There were TMAs which are amplifiers which are mounted behind the antennas, and Dan Esquibel can answer any questions you have about that. She noted the people who staffed these cases are in attendance this evening: David Rasch on the Historic cases and Dan Esquibel on the two cases she is talking about now, and Tamara Baer on the Special Exception case on the St. John's matter.

Ms. Brennan said Site 205, which is the first case, on Paseo de Vistas was the replacement of four (4) antennas, the addition of four (4) TMAs and the removal and replacement of related equipment on an existing tower. She referred to the before and after pictures beginning on page 65 on the book for these two appeals.

Ms. Brennan said Site 215 was the removal of an existing cannister containing antennas, replaced with a new cannister containing replacement antennas, and six (6) new TMAs.

Ms. Brennan said Site 205 is on City owned land which was leased from the City, with the approval of the Governing Body, in 1998, and Site 215 is on C-2, Commercially zoned private land. She said the Land Use Department staff looked at Site 205, and because of the lease, which is in the Council packet, which permits this work specifically and a lot of other things, did not believe it needed review because it already had been approved by the Governing Body. And because it is on City owned land, it was referred to the State for a building permit in accordance with practice.

Ms. Brennan said regarding Site 215, the Land Use Department staff determined it was maintenance and said it did not trigger the action of the Ordinance, noting she addressed that in her Memorandum to the Governing Body [Exhibit "9"], which appears on page 3.

Ms. Brennan said she will now turn the floor to Mr. Firstenberg to make the Appellant Statement, noting he represents the Appellants in both cases.

Mr. Zamora said, "The witnesses, including the Appellants and the Appellees will need to be sworn."

Presentation by the Appellant

Arthur Firstenberg was sworn.

Mayor Coss gave Mr. Firstenberg 15 minutes for the Appellant presentation.

Mr. Firstenberg provided copies of his statement to the Governing Body, and entered his statement for the record.

Mr. Firstenberg read his statement into the record. Please see Exhibit "11" and "11-A" for the complete text of Mr. Firstenberg's statement.

Witness Testimony – called by Arthur Firstenberg

Mr. Firstenberg called Leah Morton, M.D.

Leah Morton, M.D., was sworn.

Mr. Firstenberg asked, "Mayor, Dr. Morton, could you please tell the City Council what your credentials are."

Dr. Morton said, "I have practiced medicine [inaudible] for 30 years, the last 20 years in Santa Fe, New Mexico. I do family medicine which is from birth to death, all ages, all sexes, but mainly I see women at this point."

Mr. Firstenberg asked, "Can you tell us, Mayor, Dr. Morton, can you tell us what is electromagnetic hypersensitivity, medically."

Dr. Morton said, "Medically, it is basically a reaction immediately to cell phones, computers, cell towers, any electromagnetic frequency or radiation, from mild to very severe reaction."

Mr. Firstenberg asked, "In your, Mayor, Dr. Morton, in your opinion is EHS a disability as defined by the Americans with Disabilities Act."

Dr. Morton said, "Yes, it is a disability. A disability under that act is defined as anything that impairs a major life function, such as ability to stand, walk, breathe, think, and the exposures for these people definitely does do this."

Mr. Firstenberg asked, "Mayor, Dr. Morton, what is the treatment for EHS."

Dr. Morton said, "There is no treatment. I have to tell my patients that the only thing they can do is avoid exposure."

Mr. Firstenberg asked, "Mayor, Dr. Morton why, in your opinion, is, are cell towers a problem for people with EHS, and if so why."

Dr. Morton said, "The issue is that exposure to cell towers is involuntary. There are sensitivities of these people to appliances, computers and cell phones which they have a choice to avoid personally, but for the environment around them, there is no choice to completely avoid cell towers and have a place to live, have a place to shop, have a place to do the normal functioning of a life in this City."

Mr. Firstenberg asked, "And finally, Mayor, Dr. Morton, can you estimate how many people in your practice have EHS."

Dr. Morton said, "I am not an environmental doctor, an environmental specialist, so I have a very general population of very unusual patients, and I still have about 3% patients with electromagnetic sensitivity. And I do often ask patients for an audit around their exposures if they come in with very common problems around insomnia, rashes, irritability and often find that the normal people have minor sensitivity to these exposures, but I have a population of about 3%, which is about the figure given world wide of severe reactions and severe limitations due to electromagnetic sensitivity."

Mr. Firstenberg said, "Thank you Dr. Morton. That's all."

Appellee Statement

Peter Dwyer, Scott September and Neal [inaudible] were sworn.

Mayor Coss said the Appellee has 15 minutes for your statement. Mayor Coss noted Mr. Firstenberg covered all 5 appeals at once in his statement, and said he doesn't know if Mr. Dwyer would like to proceed that way.

Mr. Dwyer said he will just cover Case 2011-15A and 2011-15B now, and he will try to be clear, commenting he won't take 15 minutes.

Mr. Dwyer said there are five (5) different appeals, three (3) on the facilities and those have been divided into two which is fine, Sites 2011-15A and 2011-15B which are the first two which are MOD or modification sites where they take an existing antenna and modify it because of change in technology. These cases were approved administratively by staff. He said the core issue on this Appeal, in his view, is whether or not it was okay that they were reviewed and approved administratively. He said he believes it was okay that they were reviewed and approved administratively. These were existing antennas on existing structures, and they were replaced with new antennas on existing structures and other telecom facilities, the wires and things that go along with them, but the main thing is that they were not new.

Mr. Dwyer said Mr. Firstenberg mentioned that AT&T made arguments in some of their later documents on the other appeal about due process and equal protection. He does concur that he put those into the record, because he feels it is his job as an attorney to make sure that any argument we might have, we have in the record. He agrees that it is the function of the City to focus on the City Code and implementation in the City Code, and not only is it not necessary for the City Council or the preceding bodies, the hearing officer, the staff to make determinations about ADA and federal law, but that that's probably inappropriate. He said they have explored those legal arguments. He said both the City and ATAT were sued on similar facts, scenarios by Mr. Firstenberg, and the Federal Court has weighed in on those things, and that is the appropriate venue for sorting out the preemption issue under federal law. He

said the application of FDA and those kinds of things are Federal Court issues that the Federal Court has, in fact, resolved.

Mr. Dwyer said Mr. Firstenberg says he'll take an appeal of those, as is his right, and he is confident that the court has consistently decided that those federal law issues have been resolved adequately through the courts.

Mr. Dwyer said, in terms of the big picture, we're talking here about two sites, and it is important to note what Mr. Firstenberg said, which is that his approach to the issues is not case-by-case, it's not site-by-site, *per se*. The appeals may be site-by-site, but the underlying issue for Mr. Firstenberg, according to what he just told us, really is the EMF issue more broadly, while the EMF issue more broadly has been regulated comprehensively at a federal level. He said, prior to the communications act, radiofrequency emissions have been with us ever since the invention of the radio, so you have all kinds of EMF radiation ambient in the environment at all times, including AM/FM radio signals. There are a number of household devices, such as an electric can opener, the monitor on a computer, electric garage door openers, a baby monitor, a wireless phone, these things all emit EMF in various levels, and they all are regulated products. He said if you look on your key chain for your car, the thing that opens your door, you'll find the key chain for your car with the automatic door opener has a stamp on the back saying, "The FCC has looked into this and approved this product for use, and yes it does emit some level of EMF radiation," as do cell phones and cell phone antennas.

Mr. Dwyer said the difficulty is that the issues from the Appellant side are much broader than they are from "my side." He said, from his perspective, they can't hope to address all of those large scale, federal regulatory issues with which the FCC is dealing. He said we need to stick to the traditional role of local governments which is in the zoning capacity, and look at these things in terms of what are the zoning restrictions, how they have been applied, if they have been applied properly and if the application meets the criteria.

Mr. Dwyer said, in these two cases, which the City staff reviewed and felt the criteria were met, and approved them, and there was an appeal, and the Board of Adjustment agreed with staff. There was an appeal from that to the Hearing Officer. He said the Hearing Officer agreed with the staff to a point, but concluded that he needed to address some of the federal issues, and "so he did so," and I think shortly thereafter the Federal Court issued its opinion, which he believes more appropriately addressed the federal issues. .

Mr. Dwyer said the facilities were built with City approvals, with some staff discretion applied, commenting that he feels some was needed. He said not every single modification of an antenna site doesn't need to go through this kind of exhaustive process of going to staff, Board of Adjustment, Hearing Officer, City Council and eventually further.

Mr. Dwyer said staff has done a good job, and he knows this because the Federal Court agreed, and in its decision said that the existing Code does not, and should not, regulate EMF radiation of

antennae. The Court specifically looked through the City Code and "said, well did they do their job, what does it say about EMF radiation." He said, of course, the City Code says nothing about EMF radiation because, as I'm sure your attorneys have advised you, that is something that is pre-empted under the federal law, and that's what the Court said as well.

Mr. Dwyer said, in fairness to the Appellants, they have been candid in expressing their goal, and they said it again tonight. He said what they would like, is to stop all of these facilities. He said the Appellants really don't want any kind of EMF radiation, period, and that's what their concern is. He said, however, he does not believe they are seeking remedies in the proper forum, because a zoning body really isn't going to resolve those kinds of issues.

Mr. Dwyer said, "I would encourage you to stay in the traditional zoning body, which is to look at applications and appeals in the context of the Zoning Code, determine whether... in this case, what it comes down to is whether the Land Use Department correctly applied the provisions of the Code when they administrative approved modification to these two sites."

Mr. Dwyer said, "In terms of the Hearing Officer's Findings, they're not the end of the world to us. You know, I don't necessarily agree with the Hearing Officer's Findings, but his conclusion was, still, that the appeal should be denied, so we agreed with his conclusion. His Findings, I think are largely superceded by the subsequent Federal Court decision, because the Federal Court addressed all those same issues and gave us definitive case law on the issues. So, I think it is what it is. The Federal Court has made up its mind, and the only thing I would suggest in that regard, is it might be wise to follow the Federal Court decision in adopting Findings in this matter so there is no disjunct between what the City is finding and what the Federal Court is finding."

Mr. Dwyer said, "We don't have anything that we really are seeking from succeeding in this Appeal. We're not the Appellant, we're not bearing any burden of proof or anything like that, so I don't feel it is really necessary that we put on evidence. But, if the Council has questions, we did bring Neal, who is a radiofrequency expert for AT&T and Scott is an employee of AT&T. And so if you have questions regarding the application or other issues, we are here to provide you with the responses to those. But, the only thing I would ask is for Scott to come up and say, to the record, that the materials we submitted throughout this process are true and correct, and then we would rest on the record as it is presented to you. Oh, one last thing I did mean to mention is that for a summary of my position you can look at page 588 of your packets [Exhibit "9"]. I have a two page summary of our position on all of these appeals."

Scott September, AT&T Mobility, 20830 N. Tatum Blvd., Suite 400, Phoenix, Arizona, 85050 [previously sworn], said, "I am the Site Acquisition Manager for the Desert Southwest, that includes New Mexico, and the materials that we have provided through Peter Dwyer here, are accurate and correct.

Appellant questions for the Appellee/Appellee Witnesses

Mayor Coss gave five minutes for this part.

Mr. Firstenberg said he has a question for Mr. Dwyer.

Mr. Firstenberg said, "You spoke about that there is a disjunct between the Court's Decision and the Hearing Examiner's Decision. Isn't it true, that for the purposes of AT&T's Motion To Dismiss, that the Court accepted as true, my allegations that there are a significant number of people with EHS in Santa Fe and that they are disabled as defined under the ADA."

Mr. Dwyer said, "I don't recall the specifics of the Order, there were two of them. One granting AT&T's Motion To Dismiss and one granting the City's Motion To Dismiss. I do agree that the Court accepted as true all of the assertions made by the Plaintiff, the Appellant in this case. And that's because when you do a summary decision, you have to accept as true all of the allegations in the Complaint, and you can't, because what the Court is doing in those cases is deciding things as a matter of law without any reference to factual issues. So yes, they did accept those allegations all as true, and they were never tested through any process of discovery."

Mr. Firstenberg said, "Then isn't that the only disjunct between what the Hearing Examiner found and that the Court found, is that the Hearing Examiner found definitely that EHS is a disability under the ADA, and the Court accepted it provisionally for purposes of the Motion To Dismiss."

Mr. Dwyer said, "I wouldn't say that's the only disjunct. What happened there is that I think the disjunct when I was speaking of it, is that the Appellant believes that because there is an ADA injury that there is a zoning remedy. And what the Court found is that zoning was not the remedy in this case. And so, whether or not there was an injury, the Court accepted that as true, but it said you don't solve those problems that you might have through zoning. And so, that's where the disjunct is, is the application of... is the remedy through the zoning process. I think the answer is no, and I think that's what the Federal Court said."

Mr. Firstenberg said, "Isn't that also what the Hearing Examiner said. The Hearing Examiner said no, there is no remedy, I find against you, but I do make Findings of Fact about EHS being a disability under the ADA."

Mr. Dwyer said, "Yes, that's right. The Hearing Officer did find that there was no remedy, and he did ask for, specifically the testimony during that hearing, he asked people to say what they wanted as their remedies. Yes."

Mr. Firstenberg asked, "Then can you agree that the only disjunct between the two decisions is the definite finding by the Hearing Examiner that EHS is a disability under the ADA, and that there are a substantial number of people who suffer from it."

Mr. Dwyer said, "No I don't agree, and the reason is I think what the Hearing Officer did, was he started exploring ADA issues, Telecommunication Act issues. He also, on the 215 Appeal, for example, he decided that based on the shot clock rule, which is an FCC ruling on how long you get to decide an antenna case. And I just don't think he needed to go there. Those federal regulatory requirements and such can be addressed through the federal regulatory agency itself, or the federal courts, but I don't think a Zoning Hearing Officer... I think the disjunct is that, in my view, he should have just stuck to the City Code."

Mr. Firstenberg said, "Can you refer me to any particular finding or conclusion that the Hearing Examiner made, can you quote one that is disjunct with the Court's Decision, except for the findings of EHS under the ADA."

Mr. Dwyer said, "Sure. The shot clock was another finding, and I don't think that that was really under his purview. The shot clock rule is not part of City Code."

Mr. Firstenberg said, "Can you quote that to me from his Findings and Conclusions. It's not there."

Mr. Dwyer said, "Well I'll have to get them out of my file if you want, Mr. Mayor, but my point would remain the same, whether I can quote them or not, that the issues were federal issues under FCC Regulations that were being found in the Hearing Officer's Finding. You have them in your packet, so you can look at them and see."

Mr. Firstenberg said, "Let me just finish by saying also, you have them in your packet. There is no disjunct except for the EHS being a disability under the EDA. We don't have time in the five minute limit that we are allowed for me to read them all."

Appellee questions for Appellant/Appellant Witnesses

Mayor Coss asked if the Appellee has questions for the Appellant or Appellant Witnesses.

Mr. Dwyer said, "No. We believe that the record is adequate."

Appellee Questions by Staff

Ms. Brennan said, "Mayor, Councilors, I just want to correct a couple of misstatements, one on the part of Mr. Firstenberg and one on the part of Mr. Dwyer. Mr. Firstenberg stated that I did not believe that AT&T fell under the same rule that these are not within the jurisdiction of the City and are more appropriately addressed anywhere. And this is in the Special Exception, the Old Pecos Trail Exception Memo, I do an analysis and I say, 'The Federal Court Decision supports this analysis. This analysis also applies to the Appellants' Federal Question Claims.' So, I do in fact believe they are true of both parties. That these are matters of federal jurisdiction that do not fall within the Zoning Code."

Ms. Brennan continued, "With respect to Mr. Dwyer, he describes the antennas as being approved administratively by the Land Use Department. In fact, the Land Use Department reviewed them and determined they did not require to go through the administrative approval process, that they did not trigger the Ordinance, and so they just wrote a letter to that effect."

Questions by Councilors

Mayor Coss asked if there are any questions by the Councilors on these two cases before we begin the St. John's cases, and there were no questions.

- 6) **TELECOMMUNICATIONS APPEALS – 1200 OLD PECOS TRAIL, CASE #20110-190, CASE #H-11-004A AND CASE #H-11-004B:**
- a) **CASE #2010-190. AT&T APPEALS THE FEBRUARY 15, 2011 DECISION OF THE CITY OF SANTA FE BOARD OF ADJUSTMENT IN CASE #2010-190 DENYING AT&T A SPECIAL EXCEPTION FOR A TELECOMMUNICATIONS FACILITY AT ST. JOHN'S METHODIST CHURCH AT 1200 OLD PECOS TRAIL TOGETHER WITH A WAIVER TO ALLOW 53 FOOT HEIGHT WHERE 34 FEET IS ALLOWED IN THE 4-1 DISTRICT PURSUANT TO 15-6.2(E). THE PROPERTY IS LOCATED IN THE HISTORIC REVIEW OVERLAY DISTRICT. (TAMARA BAER) (KELLEY BRENNAN)**
 - b) **CASE #H-11-004A. CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE MARCH 8, 2011 DECISION OF THE CITY OF SANTA FE HISTORIC DESIGN REVIEW BOARD (BOARD), DESIGNATING THE ST. JOHN'S METHODIST CHURCH LOCATED AT 1200 OLD PECOS TRAIL AS NON-CONTRIBUTING. (DAVID RASCH) (KELLEY BRENNAN)**
 - c) **CASE #H-11-004B. CELLULAR PHONE TASK FORCE, ET AL, APPEALS THE MARCH 8, 2011 DECISION OF THE CITY OF SANTA FE HISTORIC DESIGN REVIEW BOARD (BOARD), APPROVING THE ALTERATION OF A CHIMNEY AND RELATED IMPROVEMENTS TO CONCEAL MULTIPLE ANTENNAS LOCATED AT ST. JOHN'S METHODIST CHURCH LOCATED AT 1200 OLD PECOS TRAIL. (DAVID RASCH) (KELLEY BRENNAN)**

A Memorandum dated May 2, 2011, with attachments, to the Mayor and City Councilors, from Kelley Brennan, Assistant City Attorney, regarding Case #2010-190 – 1200 Old Pecos Trail Special Exceptions, is incorporated herewith to these minutes as Exhibit "12."

A letter dated May 9, 2011, to the City of Santa Fe, c/o Matt O'Reilly, Land Use Director, K. Paul Jones, President RENESAN Institute for Lifelong Learning, regarding this case, in support of St. John's United Methodist Church, is incorporated herewith to these minutes as Exhibit "13."

A letter received April 29, 2011, to the City of Santa Fe City Clerk, from Eliot Kohen and Marilyn Cohen, regarding the Public Hearing to be held May 11, regarding Cases 2010-190, H-11-004A and H-11-004B, in support of St. John's Methodist Church in these cases, is incorporated herewith to these minutes as Exhibit "14."

A copy of "City Council Appeals, May 11, 2011, Case #H-11-004A, St. John's Methodist Church – Status," the statement for the record by Arthur Firstenberg, submitted for the record by Arthur Firstenberg, is incorporated herewith to these minutes as Exhibit "15."

A Memorandum dated May 2, 2011, with attachments, to the Mayor and City Councilors, from Kelley Brennan, Assistant City Attorney, regarding Case #H-11-004A – 1200 Old Pecos Trail – Status Review and Case #H-004A – 1200 Old Pecos Trail – Design Review, is incorporated herewith to these minutes as Exhibit "16."

A copy of "City Council Appeals, May 11, 2011, Case #H-11-004B, St. John's Methodist Church – Antennas," the statement for the record by Arthur Firstenberg, submitted for the record by Arthur Firstenberg, is incorporated herewith to these minutes as Exhibit "17."

A packet of emailed communications in support of the AT&T application received in January 2011, entered for the record by Peter Dwyer, are incorporated herewith to these minutes, collectively, as Exhibit "18."

Two emailed communications against the AT&T application received in January 2011, entered for the record by Peter Dwyer, are incorporated herewith collectively to these minutes as Exhibit "19."

An article from *SANTA FE NEW MEXICAN.com*, dated May 3, 2011, regarding "Device developed for iPhone seen as a boost for Santa Fe tourism, by Bob Quick, entered for the record by Peter Dwyer, is incorporated herewith to these minutes as Exhibit "20."

[STENOGRAPHER'S NOTE: Arthur Firstenberg asked that his earlier Statement for the Record, Exhibits "11" and "11A" be referenced for these three cases as well.]

Staff Presentation

Kelly Brennan said her Memorandums are in the Council packet in these cases. She said in the first case, the Board of Adjustment denied the Special Exception, and AT&T is the Appellant.

Ms. Brennan said in the second two cases, the Historic Design Review Board decided that the St. John's Methodist Church did not have contributing status and then decided the design. The Cellular Phone Task Force has appealed both of these decisions, so the Cellular Phone Task Force is the Appellants in those cases.

Ms. Brennan said David Rasch is here to answer questions about the Historic approval process, and Tamara Baer is here to answer questions about the Board of Adjustment process.

Statement by Appellant AT&T in Case #2010-190
John's Methodist Church Special Exception

Mr. Dwyer said on page 588 of the packet there is a two page summary of AT&T's position on these issues.

Mr. Dwyer said Site 246 is the St. John's Methodist Church on the corner of Old Pecos Trail and Cordova Road, and it is known as the pumpkin church where they have the big pumpkin sale every Halloween. The application in this case was for a special exception for height under the Board of Adjustment's authority under the current version of the Telecommunications Code to authorize a tower alternative. He said a tower alternative is defined in the Code as being something you use instead of having a tower to disguise an antenna site.

Mr. Dwyer said what was being proposed in the case is that an existing chimney, which is functional and will continue to be so, be extended with a façade, a fake surface which is RF permeable, meaning the antennas could operate through the material, and there would be a requirement for exception for height because the top of the façade and antenna structures and the top of the tower alternative would go above the height of the existing zoning which is 35 ft. for a residential zone. He noted this structure is in the Historic District and a residential zone, zoned R-1. He said telecommunications facilities are permitted under Code in all zones, it's just that there are different standards of review and requirements, depending on where you are going to site.

Mr. Dwyer said this site needed a special exception, and AT&T made application to the Board of Adjustment and provided information and supplemental information to staff. He said they had a staff meeting where they went through the application materials to be sure they submitted the appropriate materials. The Board did not approve the special exception at its meeting, and the grounds given were specifically health safety, specifically the MF health safety. He said the appellee in this matter and a number of people who probably will testify later in this meeting, were at the hearing, and the testimony was given to you in a verbatim transcript done by Melessia Helberg, so you can see exactly what was said by everybody, including himself, people giving testimony at the public hearing, the Board of Adjustment and staff. He read through that again today to be sure he is conversant in all the things which were said. He said it comes down, as Mr. Firstenberg has said tonight, to be very much based upon the EM impacts on the community.

Mr. Dwyer said he doesn't doubt the conviction of those opposing these applications, noting they clearly are willing to put forth the time and energy to oppose these things, so it is very clear that they are sincere. He said what they are sincere about is that they believe there is a negative health impact from these antennas on them in the community at large.

Mr. Dwyer said the decision was made after the hearing to deny the application for the special exception and a specific section of the Code was cited by the moving member of the Board of Adjustment. The section of the Code that was cited is the purposes section of the Telecommunications Ordinance which says one of the purposes of the Ordinance is, broadly, the health, safety and welfare of the community, noting the Governing Body can see the exact language in Ms. Brennan's memorandum to you. Mr. Dwyer said it was very clear, noting the record was replete with testimony about cancer, negative health impacts, that they believe that approval of this facility would be very bad for children.

Mr. Dwyer said the language that was used at the Public Hearing on this case was very passionate. The people who did not support these applications really, really feel strongly about this, and so there were comparisons made in the process which he thought were hyperbolic. In his two-page summary, he cited in a footnote the experience of going through a Board of Adjustment meeting where health impacts couldn't be assessed was compared to the Holocaust and Nazi Germany, or the actions of the staff and the applicant were compared to a mafia action, or those kinds of things. He reiterated people felt strongly about this application, and he believes that had a strong impact on the Board of Adjustment. He said if you read the verbatim text, which is in the packet, of what the Board of Adjustment member said in response to that, they clearly made their decision based on that testimony and on the health impacts that they perceived as having negative health implications in the community.

Mr. Dwyer said the Board had legal counsel present, and the legal counsel advised against that, telling them that isn't a good reason to be making this decision, and you have to go to the Zoning Code and the criteria, and you can't rely on the purposes provision, and you especially cannot rely on health impacts of EMF because that is federally pre-empted. He said legal counsel read into the record a complete letter from the FCC to the City of Santa Fe that was issued by the FCC in response to an inquiry about this. He said the City went to the effort to say, "Look people care, we care. Tell us FCC why you take this position on the health impacts of EMF." The FCC responded with a two-page letter which was read into the record.

Mr. Dwyer said it is very clear that the passion persuaded the Board of Adjustment, and they felt compelled to do something, even if it was against the law, and the record does say that. Mr. Dwyer said, "It is clear in the record that they say they are aware of the federal preemption issues, but we're going to vote with our heart, we're going to do this regardless. We care about the health of our community and so we're just going to say no. So, the decision was entirely based on the health impact. You can see that people still think that's a good thing. I understand if that's your conviction, that's your belief, that that's a good outcome."

Mr. Dwyer said, "I'll tell you what I proposed to the Board of Adjustment. I think we should just follow the City Code, and if you ask me to make an application for a telecommunications facility, I'll do that, but I'll follow your Code. And your Code does not, anywhere in it say, and you have to prove and this won't have a negative health impact upon the community due to EMF, because that would be federally pre-empted, you wouldn't put that in your Code, it would be a problem for you, as clearly stated at that meeting. So what the applicants do, you try to put forward your best foot. You try to put forward an application that you think meets the criteria in the Code."

Mr. Dwyer continued, "What does the Code say on this particular application. It says, 'please if you're going to go into residential areas with historic districts, be esthetically sensitive. We do not want more large towers in the downtown, particularly in the historic districts.' So, how do you avoid creation of towers. You've all seen in the downtown in the historic district, we have some lattice towers and those are not desirable under the Code. So, what you do, is you do these stealth devices. You hide things as pine trees, you put them into belfries and towers, and you put them, in this case, in a façade on a chimney structure."

Mr. Dwyer continued, "So, we read the Code, we saw that was what was desired. We made an application, we disguised it, and we provided photo simulations, drawings and details to say this is how we think we can comply with the Code. And it was very clear to me that what was being decided at the Board of Adjustment was, 'you can meet the Code all you want, we do not approve this facility because we're concerned about the EMF health impacts.' Now, I understand that, but I would suggest to you that that's not a good way to do zoning approvals. If you have a Code, you have criteria, the applicant meets the criteria, you have a goal in that, which minimizes the esthetic impacts, mitigates the proliferation of towers, try not to have too many of these things around... If applicants come in and meet those criteria, that's what you set forth, you should follow that. You should say, 'you've done as best you can.' And I don't feel any ill will toward the people who oppose these things. I understand they have a legitimate concern, legitimate point of view. It simply is not addressed in the Zoning Code. And so, there's no realistic ways that we as applicants can come forward with application that meets criteria that aren't in the Code."

Mr. Dwyer continued, "And so, with that, I would say that our application is a good one. If you look at the record, I think you will see that the opposition was based on the health concerns, and I would suggest that that's not a good basis for the decision, that the decision should be based on the criteria in the Code. We did meet those criteria. All the details are in the application materials that are in your packet. And I would suggest that you reverse the Board of Adjustment, because they were not applying the City Code."

Mayor Coss said this completes the presentation on Case #2010-190.

Presentation by the Appellant

Arthur Firstenberg (previously sworn), entered two statements for the record [Exhibits "15" and "17."

Mr. Firstenberg read his statement into the record, and used various photos and drawings to demonstrate the original and current structure, noting these documents are in the Council packet. Please see Exhibit "15," for specifics of this presentation.

Witness called by the Appellant

Helen Doherty was sworn.

Mr. Firstenberg said, "I'm going to address some questions to you, if that's okay, Mr. Mayor."

Mayor Coss said, "Okay."

Mr. Firstenberg said, "Ms. Doherty please tell the Council what your credentials are."

Ms. Doherty said, "I have a Bachelor of Arts in Urban Geography, a Bachelor of Environmental Design Studies, a Master's of Architecture. I am a registered architect in the State of New Mexico, and a member of the American Institute of Architects. I have been in the architecture business for about 28 years, the last 18 years in Santa Fe."

Mr. Firstenberg said, "Thank you, Mr. Mayor. Ms. Doherty, in architecture, can you say what the definition is of mass of a building."

Ms. Doherty said, "The mass of a building usually refers to a three dimensional size of a building as opposed to a footprint. It's the volume. A footprint would be referred to as footprint or area, square footage. Mass is really a three dimensional presentation of a building. It might also refer to the solidity of a building, whether it's, for instance an adobe building has more mass than a glass structure, but I think in this case, mass is the volume."

Mr. Firstenberg said, "Mr. Mayor. Ms. Doherty, in your... what is your professional opinion of the architecture of the church, and then your opinion, should it be designated a contributing structure and why, or why not."

Ms. Doherty said, "I really can't imagine why this building is not considered an historic, contributing structure. It's one of the... I drive in from Old Pecos Trail into downtown Santa Fe three or four days a week. I go down Old Pecos Trail and pass Cordova Road all of the time, and St. John's Methodist Church is a beautiful landmark in our City. I would really hate to see it not considered to be contributing, because if it's not a contributing structure, that means you can do anything to the architecture itself. It's a beautiful

example of 1950's style architecture. All of the façades, the main façades are intact. And, by designating it a contributing structure, you can be sure that any other additions or any other changes that are going to be made to the building will be done in a tasteful and historic contributing way. And I would hate to drive past it every day and be disgusted by a really poor addition. I think all the additions that have been done over the years, and especially the most recent one, have been very well done, and that's it."

Statement by Appellee St. John's Methodist Church

Karl Sommer, attorney for St. John's Methodist Church, was sworn, saying he swears to the degree it depends on facts sworn.

Mr. Sommer said, "I would submit that this appeal by Mr. Firstenberg and the anti-cell tower group raises a significant question for you about your preservation ordinance. To be more blunt, I think this is an anti-cell tower wolf parading in preservationist clothing. This is a recent conversion to preservation by Mr. Firstenberg, and I submit to you that his ulterior, not so ulterior, motive is to defeat a cell tower, has nothing to do with the historicity or the quality of this church, despite his representations here to you tonight."

Ms. Sommer continued, "The question on this appeal is whether it was wrong for the H-Board to allow its preservation ordinance to be prostituted in an anti-cell tower case. That Board said no, we're not going to allow that, and they did so for a very important reason which the record reveals, and that is that these standards of preservation which have been adopted by this Council, enforced by the H-Board, are important to this town. They will not be cheapened. They will not be used for any other purpose than preservation. This case attempts to use it for an anti-cell tower use, inappropriately."

Mr. Sommer continued, "The appeal raises, and depends upon a technical definition of mass and then a mathematical calculation to say the Board did something wrong. And then you have very, very scant evidence about the historicity of this building, and you're asked tonight to say, 'Oh, it's contributing.' Well, the standards about contributing are not, as Mr. Firstenberg represents to you wholly dependent and only dependent on architecture. They are not. That's not what your ordinance says. It says whether a building is contributing has three factors to it. One, what is the character of this neighborhood. This is not the core historic district. This area is residential. It is mostly comprised of single story, low level pueblo and some territorial. So you must ask yourself first, under the ordinance, what is the character of this district. Second of all, does this building establish, or enhance that particular character that you find. And the third, is does this building, by reason of its important, historic association with a person, place, event have some meaning or importance to this district, or is it so architecturally significant that it contributes to this district. Those are the three questions that you must ask to find whether this building is contributing or non-contributing."

Mr. Sommer continued, "The H-Board said we don't find it contributing. They stated one reason, but if you look at the minutes of the meeting, you will see lots and lots of discussion and you will hear from Ms. Bechtel precisely why the building does not qualify as a contributing structure. Just briefly, as you all

know our Historic Design Review Board has two components to it. One is a preservation ordinance and the other is a styles ordinance. An application must meet both of those, first and foremost, it must comply with the preservation. And that is, is the building significant, contributing or non-contributing and the standards I just went through. The other is architectural style. Mr. Firstenberg would have you say, oh, it's just a styles ordinance, it's just a style. It is not just style. It is about historicity."

Mr. Sommer continued, "The architect that just got up and spoke to you, I can't remember her name, she said if this is a non-contributing building anything can happen to it. It could be a travesty that she could drive by every day. You all know that that's not true, because our Historic Styles Ordinance still applies to non-contributing buildings. You must, you have to build, design in accordance with the Styles Ordinance. You can't just have anything to happen. There are changes that can be allowed to a building, but not just anything can happen. So, with that, I'm going to turn this over to somebody who knows what they're talking about, with respect to our Historic Preservation Ordinance, and why this building does not qualify as a non-contributing building under the Ordinance. And, why the record in front of you supports that decision. I'd like to introduce Ms. Gayla Bechtel, and have her make a few comments about what's in the record, and plus to answer any questions you might have. And then I would like, Mayor, just to sum up for a minute after she is done, if that's all right."

Mayor Coss said, "All right."

Gayla Bechtel, 1813 Hano Road, 87505. Ms. Bechtel said, "I will start with my credentials to speak on behalf of the Church, about the Church. I am a certified New Mexico Historic Architect. It means that I have satisfied the qualifications that have been laid out in §10 of Rule 410.8 of New Mexico Code. That includes that I have a current New Mexico Architectural License, with experience applying the theories, methods and practices of architecture that enable professional judgments to be made about the identification, evaluation, documentation and registration, or treatment of historic properties in New Mexico. I also have a Masters of.... Oh, I'm sorry, and then also I have to have a degree in Architecture with emphasis on history and theory. I have a Bachelor's of Architecture from the University of Southern California and a Master's of Architecture in Urban Design from Harvard University Graduate School of Design, and 20 years of architectural experience in New Mexico. And I also currently serve on the City of Santa Fe's Historic Green Task Force. That's a mouthful I know, I'm sorry, but I need for you to know that."

Ms. Bechtel continued, "When I was approached to look at this building in February, I made an independent investigation, because I did not want to represent, because I am a certified architect, and I have a great deal of, or I think I have a great deal of integrity, I did not want to say one thing if I didn't mean it. And I did not know Williard C. Kruger's work, except for the State Capitol Building and I found out more about him. Many of his buildings, the ones that are on the National Register, that are well known, most of the buildings were done during the WPA period when an architect named Kenneth Clark was his partner. The State Capitol Building was after Kenneth Clark had left the firm. And from my conversations

with architects who were in practice at the time, the State Capitol Building that Williard C. Kruger designed, was actually a much different building than was built. The building we see now was actually designed by committee after a public outcry of the architecture that was proposed initially."

Ms. Bechtel continued, "So, when I looked at the building, the building... or when I look at the ordinance, what is it that really makes a building contributing or not contributing, and what does it contribute to. You use these terms... I use them very loosely because they're sort of every day speech. But, if you really look at the ordinance, the contributing building in the Historic Review District, refers to the downtown and east side standards. The Review District itself, has no architectural style itself. So, therefore you have to look at the downtown and east side standards which are the Old Santa Fe Style, Territorial Style and then the Revival Styles of those older styles of buildings, of architecture."

Ms. Bechtel continued, "So, then you go look at the building, St. John's Methodist Church and its additions, and you realize that the building does not achieve a successful synthesis of all the different styles of architecture that it is. It has a Territorial doorway. It has brick coping. Some of the windows have pediments, some of them have brick sills. On the nave itself, it's more a panelized system which is more verticality in its expression. The actual roof is actually seen in Gothic churches. And, so you can't really say it is a Territorial Style building, and therefore can't say, if you follow the logic, you can't say it is a contributing building to the Historic District because it is not a Territorial Style building or Revival Style building. So those are my major points"

Ms. Bechtel continued, "The other one I'd like to make is that the H-Board sat through a very long presentation, which I'm just doing a very short synopsis of, and I would hope that you would honor their decision. Thank you."

Mr. Sommer said, "Mr. Mayor, I'd like to close on a very similar point, and that is, you all hear almost *ad nauseum* appeals from the H-Board, and you overturn them sometimes, and you support them sometimes. But you do know one thing all of the time, that this is one of the toughest Boards to get by. They are not weaklings when it comes to preservation. They are tough on that issue. I can tell you I had lots of cases in front of them, and then brought them in front of you, lost most of them, won some of them, but I can tell you that the standard that has been upheld by that Board, which you entrust with that duty is tough. And they have said, that body in light of all the evidence, it's not a contributing building. And I do believe that deserves some weight in front of you, so with that, we would stand for any questions you might have, and I appreciate the opportunity to address you."

Statement by Appellee AT&T

Mr. Dwyer said, "Mr. Mayor and members of the Council, it's my understanding we're doing the entire, both cases on St. John's, both the Historic Review for Status and also for Design. So, you've now heard from Mr. Sommer and Ms. Bechtel about the design... I mean about the contributing status issue, but I wanted to augment that by telling you, the same application that went to the Board of Adjustment, of

course, went to the Design Review Board. And they are largely concerned with esthetics. And we attempted to make this thing, the façade disguising the antennas as integral a part of the building as possible, so it wouldn't be discernable to the naked eye driving by that this looked anything like an antenna or antenna facility."

Mr. Dwyer continued, "And that really is the gist of the telecommunications portion of the Code, is do that. Do not make these things ostentatious and ugly and an eyesore for the community. So that's the application which was before them, and they approved that too. So, just following on what Carl just said, they did not see this building as contributing. And at that hearing we also had Bernabe Romero, another architect speaking to that issue, and his opinion was, and this is all in the record and you can confirm this if you like, but his opinion was that the approval of that building as being contributing would actually be bad for the District. Because if you start making things like this building contributing, quote unquote, then that could, in return, become part of the standard for the next building that comes in, in terms of their design, and you are really softening the standard, because you're allowing all of these elements, these architectural elements that are not typical of the particular style that is supposed to characterize that neighborhood."

Mr. Dwyer continued, "So the feeling was that it was not, from our expert, that it was not appropriate to consider this contributing. But then the other thing that wasn't pointed out too much, but that's in your packet, in your Staff Report, is that the Board itself was strongly persuaded by the fact that only less than fifty percent of the structures on the site, using a square footage basis, were fifty years or older. There were two additions, one in the nineties and one, I forget when the other one was, it's in your packet. There were two additions done in a period less than fifty years ago. So I believe what persuaded the Board on the contributing status issue, was they felt like there had been too much addition, and not enough of the initial structure that was fifty years old was the prevailing theme that you would see when you are driving by. So, I'll allow you... you can go ahead and look at what the HDRB did in their Findings and Conclusions yourself, but that was my read on it. It was that they were concerned that this really wasn't contributing for that other reason as well."

Mr. Dwyer continued, "And then moving on to the design. I explained to the HDRB that we had a need for this structure in this District, in this area, that we look for high, existing, vertical infrastructure to put it on. And that the alternative is tower construction, and we didn't really seriously entertain the idea of proposing a new tower in the Historic District or an R-1 Residential District, because I think that common sense would tell you that that application is not going to be favorably reviewed. So your choice at that point is to look for existing tall structures in a residential neighborhood in a historic district, where tall structures are the exception and not the rule. And that's why you go to churches, because they are tall, they have steeples, they have these chimneys and other high structures that are already there to get some telecommunications coverage and use out of an existing building, without having to build new stuff that is perhaps not as attractive to the community."

Mr. Dwyer continued, "And they were persuaded. They agreed that this was an appropriate use in that District, that the application met their esthetic scrutiny, so I feel like that was an important hurdle for

use. If the HDRB felt that it was esthetically non-offensive, that we had really succeeded in putting forward an application that met the City's Code, that addressed the core City Code issue, which is trying not to make our City ugly. You know, trying to do these things in a sensitive manner."

Mr. Dwyer continued, "So, we feel that our application was good, it was complete and that it was esthetically, relative pleasing, and that therefore it should be approved here as it was there. I encourage you to support the HDRB."

Mr. Dwyer continued, "And then, because this may be my last chance to speak, I just wanted to put in a few points on the larger issue of telecommunications in the community. I know in the Public Hearing, it's likely you will hear a lot of criticism of the role of telecommunications in the community. You've already heard that in Firstenberg's initial presentation about how he perceives this in a very negative light as being a bad thing because of the health and safety issues."

Mr. Dwyer continued, "I just want to point out for you that there was an article on May third, last week, in *The Santa Fe New Mexican* [Exhibit "20"], about the development of an iPhone application by some downtown business people who are trying to, you know, encourage people to come and shop in their areas. And in doing so, they put out this app that helps tourists to find the downtown shopping in their stores. And that kind of tells me where a lot of this community is, who may not be represented here tonight, which is that they're working with this technology to try and enhance their businesses in the community."

Mr. Dwyer continued, "I did put into the Board of Adjustment packet on the S2-46, the responses that AT&T got to an inquiry about how their consumers felt about telecommunications facilities in Santa Fe. There were 40 letters, and I'll put them in again tonight, although I'm sure they're already in the record. There were 40 responses from people who basically said, yes, we want enhanced telecommunications facilities in Santa Fe [Exhibit "18"]. So, if these people are here tonight, or not, I can tell you there are people out there who use iPhones, and they pay a lot of money for them and they do want coverage. They do want this technology. It's very functional. It's very useful, and I feel that those people perhaps are not fully represented in these proceedings. We did receive two letters, two responses that were negative: one said, 'Although I agree that AT&T cell service is sub-standard, I am not in favor of cell towers in neighborhoods or anywhere that could endanger people's health. We need to go underground like research in other countries suggest.' The other one said, 'Please do not add more cell sites in Santa Fe' [Exhibit "19"]. So this is a sampling of what we got back when we just asked people who used the services how they felt. It was 40 for and 2 opposed."

Mr. Dwyer continued, "I just want to encourage you to take the public testimony on these issues under advisement, in light of the full knowledge that this is technology that is extremely useful, and is extremely desirable to a large segment of this society. They do want their cell phones to work. They do want 3G and eventually 4G technology. They want high speed access to the internet and that's what we're trying to provide. We're not building these things to annoy you or to create appeals to the City Council. We're building these because consumers demand these services and you can see they have an economic

impact on this community. People do want them for their own businesses and for emergency services and a number of other perfectly legitimate uses. So, there are two sides to the debate. And I'll ask Melessia to put these into the record."

Cellular Phone Task Force Statement – HDRB Cases

Ms. Brennan said, "I apologize. Mr. Firstenberg did not realize he was addressing both HDRB cases and would like a few minutes just to address the design issue.

Mr. Firstenberg said, "Before I begin, I want to respond to a statement that's been made about me, my ulterior motives. I have an extensive background in historic preservation. I lived in Mendocino, California on occasions from 1982 to 1984, and from 1999 to 2004, and the entire Village of Mendocino is a historic preservation district. The entire Village is on the National Register of Historic Places. For three years in the early 1980's, I was the Clerk of the Mendocino Historical Review Board. Every application for any alteration to any property within the Village had to be approved by the Board. I went to virtually every MHRB meeting during the total of the eight years that I lived there, so my interest is not as unfocused as some might think."

Mr. Firstenberg read his statement into the record, and used various photos and drawings to demonstrate the proposed design and appearance of the chimney which will house the antennas, as it currently exists, and as proposed. Please see Exhibit "17," for specifics of this presentation.

AT&T Attorney's Questions

Mr. Dwyer said he would like to ask Scott September to say once again, that the application materials, which is what we are relying on in the record and which we provided, is true and correct, and said, "I think we can rest with that."

Scott September, previously sworn, said, "Mayor and Council, the information and materials we provided are true and accurate."

St. John's Attorney's Questions

There were no questions from St. John's attorney.

Cellular Phone Task Force Questions

Mr. Firstenberg said he has no further questions.

Questions from the Councilors/Governing Body

There were no questions from the Councilors/Governing Body at this time.

Mayor Coss asked Kelley Brennan if she would like to add anything.

Ms. Brennan said, "Mayor, Councilors, I'll stand for questions at the end.

Public Hearing

Speaking to the Request

All those speaking were sworn en masse

Mayor Coss said everyone will have to be sworn. He asked those speaking to try not to be repetitive of previous remarks, and said people really shouldn't speak to the health care issues, noting this was made pretty clear this evening that these are all Land Use Cases.

Mayor Coss gave each person two minutes to speak to any or all of the five (5) cases.

Robert Slusher [previously sworn], said it seems to him there are 3 issues, one is the zoning. The second issue is health. He has 3 Masters in Science and 2 Bachelors in Science and he is in favor of continuing technology. He said 1920 when horseless carriages came along and people died of asthma, and they complained and moved to keep their children from being run over by horseless carriages, but technology moved on and will continue to move on. He said we all want and have cell phones and we're not going to get rid of them. He said he is sorry about these poor people who suffer, and suggests a huge Faraday Cage about 3 miles in diameter, commenting if you know physics, you know what a Faraday Cage is, it eliminates all parts of the home of electromagnetic radiation and they will be isolated from that, or they can move to a farm, and this is the difficult. He said it is also prejudicial to his health to go out on the highway and be run down by drunk drivers. He said liquor flows everywhere in New Mexico freely, and the judges turn loose the drunk drivers and they are back on the road, and said he is being discriminated against and resents it. The third issue is the esthetics. He said, as an artist, esthetics are in the eye of the beholder. He thinks St. John's is the ugliest building in Santa Fe. It is a block structure, a hodge podge and no one can deny that, and asked why it should be considered a historic building. He doesn't know Mr. Kruger. He said the only treasure to be preserved are the people and not the structure.

Bill Bruno, Ph. D. [previously sworn] said he has two bachelor's degrees and a PhD in Physics. He used the overhead to show a paper he just posted on the physics preprint server at Cornell two months ago where all the major physics papers are published these days. He said, "It is a simple calculation showing... it's been argued that microwaves have to be save, because the single energy in a microwave

photon isn't enough to break a bond. The problem is the number of photons. And so here, I'm showing you the number of photons.... when you get a medical x-ray the number of photons per cubic wavelength is ten to the minus twenty-four, so that means 10 rays to the minus 24 power, which is less than one in a billion billion wavelengths. For UV light, it's less than one in a million cubic wavelengths. For cell phones, or cell towers, you are talking a billion photons per cubic wavelength. That's why there's a problem. And then I go on to look at the actual energy that, first of all illustrates there are known cases where photons do get together and combine forces. The most striking example is call optical tweezers. You can take a laser beam and grab onto a little ball that is floating in water and make it move just by moving the laser light, and you know, you can even break bonds by doing that because the photons are all working together. The same thing can happen, I mean you can't actually move a ball around... well you could do it with microwaves, but you'd need a bigger ball, it would be more complicated. But you actually can apply forces by using microwaves. And then, I showed you this side before, but I think I'll show it again. This is a rat brain that wasn't exposed to a cell phone, this one was exposed for two hours. There's leakage in the blood brain barrier. And this is by a head of an NIA Institute just published this year, showing that after... 5-30 minutes after cell phone use increased metabolism in the brain."

John McPhee, representing himself [previously sworn], said since he can't speak to health, he can only speak to the liability of the City. He said Dr. Morton said 3% of her patients have issues, which would translate to approximately 1,800 people in the City, and for a lawsuit of \$100,000 each, would constitute \$180 million in liability of the City, commenting this isn't a large amount of people and these aren't large lawsuits. He is amazed the Methodist Church is still here. "There are more studies than there are on tobacco." The liability issues for them are amazing, with two nursery schools within a few hundred yards of the church and of the Children's Museum. He said a formal complaint was filed against him for saying he represents all of the Children of New Mexico, commenting that he isn't representing all of the children of New Mexico, just any child. He said AT&T is going to "dispute the fact that exposure to a 4G network is unprecedented for any fetus or small child."

Sarah Vacha, La Tierra, [previously sworn], said since Mr. McPhee preceded her, she won't open with her statement that there is a huge population with no representation which are children. She said her son died of cancer and knows what it is like to see your child die with cancer. She said, speaking for the children of Santa Fe, we must do this. This isn't architectural. It's humane. She said babies exposed to their parents' cell phone calls, whose vulnerable brain cells take one hour to recover for every one minute of the near-standing parent's call, "is a fact." She asked what will 12 very strong antennas in a church chimney do to the children in the child care center on the playground next to the church. She said a storage house will be put only two feet from the playground. She said elementary age children with cell phones, iPods, wi-fi iPads and SmartPhones are given as gifts now, and in 5 years you could be gifting them with a brain tumor. She said, "That is a fact." She said there is a good chance these children won't reach age 17 before developing brain cancer. She said by putting up a plethora of cell towers or antennas in this City we are increasing the microwave smog which adds to all of the other radiation sources of devices, etc., in our society.

Monica Steinhoff, 1298 Lejano Lane [previously sworn], said she thinks the Council, the AT&T lawyers might want to look at "this book." We are creating more intense radiation than is natural through the cell tower industry, etc. She said she is upset and "jangled by the cell phones and everything in this room, because I have that sensitivity." She said it took 30 years for science and medical science to recognize that a woman getting an x-ray when she's pregnant, "creates 1/5 of the children who have leukemia before age 5. There are some mistakes in this. She said, "First I want to confess. I was the person who mentioned Nazi Germany. I was born there and I spent 7 years in graduate school getting a Ph.D. studying Nazi Germany, and there are few simple things that basic parallels when a government won't let us talk about the environment or about health, is exactly what Nazi Germany did. They sentenced 6 million people to death. We're doing something even more right now, we're sentencing the whole world to a microwave oven, so this is a much bigger Holocaust, it just hasn't come home yet. It didn't come home immediately to Germany either. So, that's a parallel." She said this is a Christian Church, and Christ is the basis of that church, and he said, 'what you do unto the least of these, you do unto me.' She believes putting a cell tower on a church next to the Children's Museum where there are lots of parents already looking at 3Gs. She said if they do more, what will it do to the children who already are hyperactive. She can't go there or a library. She said you have ramps for the disabled, but nothing has been done.

Mayor Coss asked Ms. Steinhoff to wrap-up her remarks because she exceeded the two minutes, and Ms. Steinhoff said, "And I'm going to talk a tiny bit more because this is very important." And again, Mayor Coss asked her to wrap-up her remarks.

Ms. Steinhoff said you could say no cell phones at the libraries for two hours so some of them can take their grandchildren there, or one car on the Rail Runner without wi-fi, a quiet car which is what they do in Europe.

Mayor Coss again asked Ms. Steinhoff to wrap-up her remarks, noting they aren't related to the appeals.

Ms. Steinhoff asked "please do something so there are safe places for people to go in Santa Fe." The highest thing on the horizon are cell towers. She said, "We were supposed to be, traditionally, the City of Holy Faith. It has become the City of Unholy cell towers."

Lola Moonfrog, P.O. Box 8019, Santa Fe [previously sworn], said she takes great umbrage to Mr. Sommer's remark that we have no interest in preservation and we are just an anti-cell group. She said her family home, the Lola Maverick Lloyd House near Chicago is on the National Register of Historic Places, noting she fought hard for that to happen. She said she has been in Santa Fe for 30 years, and to her, the church is historic. She said perhaps she doesn't have the proper qualifications to say that, but she feels it is a very important place to preserve the esthetics. She also feels strongly about it being a public place where there are children, near another public place where there are young children. She agrees with the previous testimony. There are some proven things, especially about children. She said hiding the towers in churches and exposing more people to another public place which has no refuge for people with

sensitivities is not wisdom. She said there is another alternative to building big, tall towers elsewhere in the cities, is not to build some of the new towers.

Brook Pyeath, Camino San Patricio, [previously sworn], said he is sorry but he has to mention health, and there are no municipal boards he can stand before and speak his real concerns. He said no respect is meant to any one individually. He said, "Since 1997, my partner has been electrically hypersensitive. If she is at a computer, or around wi-fi, florescent lights, or even drives near antennas she gets sick. For several years, she has been unable to support herself because of this problem. We look regularly for housing that would decrease her exposure to radiofrequency radiation, and have not yet come up with a good alternative to where we live now, even though our place now is detrimental to her health. Her civil rights, as defined by the ADA and the 14th Amendment need to be respected, starting at the local level. I will also add that while bad dentistry had something to do with her tipping point into electrical hypersensitivity I think every one of us are likely to have our own tipping point at some point down the line, sooner or later, as wireless devices proliferate."

Bruce Sherwood, 515 E. Coronado Road, [previously sworn], said his background is in physics. He said one thing that has not been made clear is that there is a real difference between cell phone towers and cell phones. Cell phones are used by consenting adults and they output a watt or less near the brain. He said [inaudible] study doesn't seem to show any effects, and one could say it hasn't gone on long enough or something. He said cell towers are, by design, extremely low power, and has read it is about 25 watts. They have to be lower power because of the way they work, each tower dealing with a neighboring set of uses. A 24 watt, at least inherently, isn't a very serious thing, and generally vastly small power levels compared to a cell phone by your head. Secondly, in the measurements there seems to be a placebo effect, although placebos can have a powerful effect on human health. You tell somebody this medicine will make them feel better, and it well may be, it's a known effect. There is also a nocebo effect – I expect to be badly influenced and I am - it's a self-fulfilling prophecy. There is a very interesting measurement where volunteers, both sensitive and not sensitive people were looked at through functional MRI which looks at brain activity, and they had a cell phone beside them which could be on or off. And the people who are sensitive showed in brain activity all the symptoms of real pain, the pain is real, but the cell phone was never turned on. He doesn't know how to help the people who have this sensitivity and at the same time help and support those who want Santa Fe to move forward.

Lee Lewin [previously sworn] said she is representing her extended family and her mother, who had to leave. The family home is at 308 Madrid Lane directly behind church, and are immediately adjacent to and share a share a property boundary with the Church. The proposed 12 antennas and the ancillary structures are less than a stone's throw from her mother's bedroom, and they are concerned. She said her family vigorously opposes these antennas and ancillary structures. They believe their presence will degrade the value of their property and health, and appeal to you to not allow them to be built.

Valerie Morris, 144 Alamo Drive, [previously sworn], said this is a complex issue, and understands it is hard to grasp all of the innuendos and complexities. She said a lot of people say that the regulations take care of everything. The fact is that our regulations are way behind. She said the last time the regulations were updated was in 1970. And they say that paying fines is considered part of the cost of doing business. She said the head of the Response Team for OHSA, Bob Curtis, talked about the cautionary principle which is when an activity raises threats of harm to human health and the environment, precautionary measures should be taken even if some cause/effect relationship has not been fully established. The companies should bear the burden of proof to say that it is safe for us. She is really concerned about the City Code which she heard was being rewritten because of this issue this year. She said she will hesitate to bring her granddaughter to Children's Museum. She said at her granddaughter's school the principle thought this was a dead issue, because her child goes to one of the pre-schools in the Church. She thinks a lot of people don't know this is still an open issue, and there might have been more people here tonight who are concerned about children.

Virginia Miller, 125 Calle Don Jose, [previously sworn], said she doesn't feel safe living in Santa Fe anymore. She said since the 3G was activated by A&T last Fall she has been developing symptoms, but before that she had none. She said it is hard for her to think clearly which is hard for her, and her memory isn't as good, she is very irritable. She said these are symptoms which independently funded studies show result from over-exposure to radiofrequency radiation – irritability, rage, sleep disorders, memory loss and accelerated aging. She said her aging has accelerated greatly over the past few months, and she is deeply concerned. She said one reason she liked living here was the health and human focus and priorities. She has always taken good care of her health, and the only thing different has been the activation of the 3G by AT&T and will get worse with the 4-5G coming in. She said she knows a lot of people like it, but it's not necessary. She said the FCC regulations are totally inadequate and don't address the real issues and the health concern. She spoke about the Albany, California decision to deny applications.

Mayor Coss asked Ms. Miller to wrap-up her presentation.

Ms. Miller asked the Governing Body to be open to the study done by the Health Department and the Environment Department which will report on the effects of cell phone radiation, with recommendations on how to alleviate dangerous effects, to the Legislative Health and Human Services Committee.

Stefanie Beninato, [previously sworn], said she will try to focus on zoning issues, rather than health and public welfare. She said she believes there is a problem not addressing equal protection under the 14th Amendment and believes the City is setting itself up for lawsuits. She said although the federal courts seem to be a place to address these issues, it starts locally, and lawyers are constantly reinterpreting laws trying to limit or expand laws, and it is this kind of argument in formal settings which allows laws to be change. She said to say that we shouldn't talk about them at the local level and only do that at the federal level negates our rights as citizens to engage in this kind of dialogue that is absolutely

necessary, because things which are seemingly safe take years sometimes to learn are dangerous, such as the radiation at White Sands.

Ms. Beninato said in terms of the first two applications, she has procedural problems which could be deadly to those applications. She said there are at least two people serving on the Board who have conflicts: Alexandra Ladd and Monica Montoya. Ms. Beninato said either their spouses have contracts dealing with land use and you are pressured not to go against the land use recommendations. She said Ms. Montoya represents people before the Planning Commission. She said Reed v. Board of Optometry says it doesn't matter whether the individual is honest, but whether a reasonable person would perceive a person in that situation with that kind of conflict, whether they would be biased or not. So you have that problem going on in virtually all of the BOA cases.

Ms. Beninato said you also have a problem with Tamara Baer having a conflict with her architect husband who works for AT&T and she's the staff member. She said Mr. Dwyer.

Mayor Coss asked Ms. Beninato to wrap up her presentation because she has exceeded her time.

Ms. Beninato said no, she was going to take a few minutes more.

Mayor Coss said no, and asked Ms. Beninato to wrap up her presentation.

Ms. Beninato continued her presentation and again the Mayor asked her to wrap-up.

Ms. Beninato said she just needs a minute and again continued her presentation, and the Mayor declared a recess at this time.

Recess – 9:38 p.m. 9:53

Mayor Coss reiterated that each person has two minutes for their presentation.

Francis Abernathy, 16 Mimosa Road, [previously sworn], said he is a member of St. John's Church. He said the gentleman talked about the power going out. He has a bachelor's in Electrical Engineering from North Carolina State, and has been working electronics for 61 years. He said the inverse square law applies here. He said, for example, if you are 8 feet from an antenna the power would be 1/16 of what was at the antenna, and at 150 feet the power would be negligible from the antenna in this cell tower, noting the children are 50 feet or more away. He said the power being received by the children is negligible, if at all. He participated in a NASA study, and people were being radiated by the old televisions. He said people need to consider that. He said he once served as a city councilor, and he would resent being called a Nazi. He said the last time he was called a Nazi, was when he read a resolution condemning the activities of the Ku Klux Klan.

Paul D'Arcy, Trustee, St. John's Methodist Church [previously sworn] presented graphs via the overhead on the incidence of cancers considered to be effected by radiation. He said the graph represents 25 years and then tapers off, noting it shows the incident rate per 100,000 people. He said cell towers have been around for about 25 years and apparently it hasn't impacted the brain or the central nervous system. He said what has been missing in the 5 public meetings he has attended is the public – where is the commerce. He said we really are talking about broadband and broadband width. He said when we talk about cell towers, that is yesterday, back in 2007. He said that has changed and we now have PDAs with our data, and 23% of all cell phones are now PDA and that number is increasing, noting it should increase by 300,000 in the coming year.

Mr. D'Arcy said, "From our standpoint, we're behind in New Mexico and I think we're behind in Santa Fe in broadband coverage. And what does that mean to us. Well, it means we don't have a lot of good infrastructure coverage in term of some of the areas. And I would like to talk specifically to education. We have just one high school that is rated by U.S. News and World Report in this county and that is of course is the Academy Technical classes. We're rated 29th in spending per pupil and I have to believe that the broadband access by a lot of students would encourage and increase opposition, in terms of education. Please help our students."

Dr. Raymond Singer [previously sworn] said he has lived and worked here for about 25 years. He practices as a neurotoxicologist which studies the effects of toxic substances and agents on the human nervous system, and as a neuropsychologist he studies the brain behavior relationship, and he has some inconvenient news about microwave radiation from the Canadian National Research Council. The Council reports that anecdotal reports and epidemiological studies have found increased headaches, sleep disturbance, depression, decreased libido, increased rates of suicide, concentration problems, dizziness, memory changes, tremors and other neurophysiological effects in populations near base stations. With regard to epidemiological studies that have been peer reviewed, a study in 2010 reviews these studies, which found that 7 of 8 studies of nervous system dysfunction from cell transmission towers identified adverse neural behavioral health effects. He said it is clear that these effects happen to humans and animals, in many different studies. He has studied one person in depth in terms of possible psychological contributions to his electrical hypersensitivity, and was able to find no psychopathology which could explain his symptoms, and with quasi-blind studies it appeared that he was sensitive to electrical stimulation in the environment.

Elizabeth Perez [previously sworn], said the Cellular Phone Task Force has made its mission to wipe out cellular communications in Santa Fe. She believes the vast majority of residents want their service to be improved and maintained, and prefer to have safety and medical services that rely on wireless technology. She said her mother broke her elbow and went to the hospital which uses lots of wireless communication. They take their notes on an iPad, and do all sorts of things they couldn't have done before the digital revolution. Her brother, an engineer, said the more modern the technology, the less EMFs which are produced. She said allowing one group, as well meaning as they are with dubious

science behind them, to impact the property rights of the Methodist Church and Santa Feans is not right. She said the downtown merchants have apps now and it's popular. She said our concern is for health and safety as well. She has done a lot of tests, talked to a lot of people, and believes the jury is still out on that. She does not believe that the FCC is a criminal organization and they do know something about protecting us. She said it is important to point out that all electronics emit EMFs, wired and not wired, noting the sun also emits EMFs, noting she isn't asking the City to put up a tent so she doesn't get sunburn.

Julie Tambourine [previously sworn], thanked Ms. Dwyer for stating that his client is just trying to follow City Code which shows respect. She said Mr. Dwyer said the church is known as the pumpkin church, but it is also known as the food pantry on which they rely for food. She said some of the people no longer will be able to get their food if the antennas are installed. These people have medical conditions such as asthma, heart problems, seizures and diabetes. She said people in Santa Fe also are known for our love of family and neighbors. She asked when it is okay to ignore the known health hazards to our family and neighbors just because a code or our government instructs us to do so. She is proud of her family heritage, saying not too long ago members of her family might have followed their government's instructions and made decisions which, in hindsight, may have resulted in the destruction of the health and lives of some of our Polish friends and neighbors. On behalf of her family, she asks the Governing Body to first consider their responsibility as human beings, to make decisions which may affect the health in our community. She said it is never okay to make a decision to ignore the health and well being of our people, no matter what our City Code or any government states.

Philip Westen [previously sworn], said he is hereregarding the prospect of historic preservation of the building. He has lived across the street from St. John's all his life, and he has seen all kinds of changes, noting his house is a year older than the church, which puts him in a horrible position if it is found to be contributing because he would love to replace his windows which are the same as that at the Church. He said with regard to the height of the chimney, "I would love to see that stupid metal thing covered up." He said it is one of the ugliest things he's ever seen. He said when he had to do reports in college for American History, and chose to do the report on the architecture of Santa Fe and on buildings of Territorial Style, Adobe Style and such. He said the St. John's Methodist Church was never included because it doesn't fit any kind of real structure or historic status. He said he has Type II Diabetes and uses his cell phone, has wireless in his house, but he is doing just fine, so he doesn't believe there is "quite that same problem."

The Public Hearing was closed

Action by the City Council on each of the 5 cases

Ms. Brennan said she would like to speak to the Special Exception before the Council votes.

Item H(5)(a) – Case #2011-15A

MOTION: Councilor Wurzbarger moved, seconded by Councilor Calvert to deny the appeal in this case, with Board of Adjustment's Findings of Fact and Conclusions of Law.

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

For: Councilor Calvert, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: Councilor Chavez.

Item H(5)(b) – Case #2011-15B

MOTION: Councilor Ortiz moved, seconded by Councilor Wurzbarger, to deny the appeal in this case and hold that the application did not need to go through an administrative approval process.

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

For: Councilor Calvert, Councilor Dominguez, Councilor Ortiz, Councilor Romero, Councilor Trujillo and Councilor Wurzbarger.

Against: Councilor Chavez.

Item H(6)(a) – Case #2010-190

MOTION: Councilor Wurzbarger moved, seconded by Councilor Dominguez, to uphold the appeal in this case.

DISCUSSION: Ms. Brennan said, "I would like to call your attention to the packet. In the conclusion of my Memo, I say, "If the Governing Body denies the Appellant's appeal, staff recommends that it cite to evidence in the written record in support of its decision. If the Governing Body approves the Appellant's appeal, staff recommends that it condition its approval on the 'Recommended Conditions of Approval' set out in Exhibit A to the Staff Report and that it cite to the information contained in the Staff Report and the Application in support of its decision."

Councilor Ortiz said he has a question on Item H(6)(b), and asked Mr. Firstenberg, given the oral and written testimony he gave on Item H(5), and then his comments on Item H(6) regarding his concern of the status of contributing, if it is his testimony that he would have appealed this decision, the designation of non-contributing irrespective of the effect it would have in the placement of wireless communication facilities, and Mr. Firstenberg said that is his testimony.

Councilor Ortiz asked Mr. Firstenberg if it is also his testimony that he would have appealed the decision of the H-Board approving the chimney alteration even it was hollow or made to get rid of the metal structure.

Mr. Firstenberg said yes, he feels more strongly about the alteration of the chimney than he does about whether or not it is contributing. He presently resides 3 blocks from the church and he has a stake in what it looks like.

Councilor Ortiz asked Ms. Brennan if the Council were to find that the church should have been designated as contributing, and find that the H-Board was incorrect, does that require us to make a decision on H(6)(a) and H(6)(c), or does that go back as the result of our decision in H(6)(b).

Ms. Brennan said there is a provision in the Telecommunications Ordinance which prohibits absolutely antenna use on a contributing property.

Councilor Ortiz said then an affirmation on H(6)(b) would necessarily render a decision on (c) and (d) moot and we would have no ability to have that, and Ms. Brennan said that is correct.

Councilor Ortiz asked Ms. Brennan if she agrees with the summary conclusion made by Mr. Sommer as part of the decision on whether a structure is contributing, the three prong test – age, contribution to the character of the neighborhood and historical significance.

Ms. Brennan said that is directly from the definition of a contributing structure in the Code. She staffs the H-Board and has seen heated disagreements about the value of the structure, and the H-Board is given the charge to ultimately decide these matters which always are subject to appeal.

Councilor Ortiz said the second issue is how the structure contributes to the character of neighborhood which surrounds it, or if it is the H-District as a whole.

Ms. Brennan believes it is the H-District as a whole, but they typically look at the streetscape.

Councilor Ortiz said the third test is if we can find historical significance to the structure, either by who occupied it, who designed it.

Councilor Ortiz asked Mr. Firstenberg if he has the photos of the plaques showing the additions to the Church and the year, and Mr. Firstenberg provided the photos, noting the photos are on pages 101-107 of the packet [Exhibit "16"].

Councilor Ortiz commented on a recent decision with which he agreed, regarding a case before the Council 4 years ago in which he thought the evidence was weaker than what we find today in this case. He said we designated a house in a residential neighbor as contributing, which he thought was based on very flimsy evidence, and believes was based on an ulterior motive. He said what we have now, the evidence presented on the record and in the packet, is at least more evidence than on that case. He said it is sense that the H-Board in making its decision, by finding this to be non-contributing, was inconsistent in how it applied the standards listed as it related to the case on 300 Houghton. He said the Houghton house was found to be contributing because some historian or architect lived in it. He said the evidence here shows at least as much as in the other case, and "I find that the H-Board's decision therefore is consistent, as I remember that case, 300 Houghton, in comparing it to its decision on Item H(6)(b)."

Councilor Wurzbarger said she remembers that case and it was inconsistent and inappropriate and doesn't believe we should repeat that mistake tonight.

Ms. Brennan said this is a special exception. If the Governing Body denies the appeal, staff recommends it cite to evidence in the written record in support of its decision, to be in compliance with federal law and code. If the Governing Body approves the Appellant's appeal, staff recommends that it condition its approval on the 'Recommended Conditions of Approval' set out in Exhibit A to the Staff Report and that it cite to the information contained in the Staff Report and the Application in support of its decision.

RESTATEMENT OF THE MOTION: Councilor Wurzbarger moved, seconded by Councilor Dominguez, to uphold the appeal, with staff recommendations as written in the record.

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

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

Against: Councilor Chavez and Councilor Ortiz.

Explaining his vote: Councilor Ortiz said, "In explaining my vote, I find unpersuasive the decision making of the Board of Adjustment. I think they relied upon, besides faulty logic, they relied upon a preamble provision of the law, and for that reason on 6(a), I vote yes."

Item H(6)(b) – Case #H-11-004A

MOTION: Councilor Wurzbarger moved, seconded by Councilor Romero, to deny the appeal in this case and to support the decision of the Historic Design Review Board.

DISCUSSION: Councilor Ortiz said he doesn't support the decision of the H-Board, especially in this case, and he finds that the H-Board's logic is inconsistent with its prior decision on 300 Houghton, he finds the evidence presented in this case, whether or not it was for an ulterior motive, whether or not you believe the

public testimony regarding the proposed benefits, the indicia of evidence that supports that St. John's Methodist Church meets the age criteria, it does, it's over 50 years old, whether it contributes to the character of the community, it does and whether or not it has a historical significance, the architect for this Church has some imminence in New Mexico, noting he designed the State Capitol and this structure and other. He said this Methodist community has contributed greatly to Santa Fe. He said this evidence is greater than we had and the H-Board had on 300 Houghton, so he is opposed to the motion and believes the church is contributing, and the evidence in the appeal certainly shows that.

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

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

Against: Councilor Chavez and Councilor Ortiz.

Explaining his vote: Councilor Ortiz said, "For the reasons I've cited in my argument, no."

Item H(6)(c) – Case #H-11-004B

MOTION: Councilor Wurzbarger moved, seconded by Councilor Calvert, to deny the appeal, and to support the decision of the Historic Design Review Board in this case.

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

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

Against: Councilor Chavez and Councilor Ortiz.

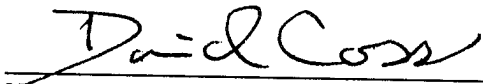
Mayor Coss thanked everyone who participated in the hearings and for their presentations and their decorum. However, comparing anything about the AT&T land use case to Nazism, or Nazi Germany and comparing this to the Holocaust, he finds personally insensitive and highly offensive, given what really happened in the Holocaust

- 7) **REQUEST FROM BALCONIES, INC., FOR A RESTAURANT LIQUOR LICENSE (BEER AND WINE ON-PREMISES CONSUMPTION ONLY) TO BE LOCATED AT THE ORE HOUSE, 50 LINCOLN AVENUE. (YOLANDA Y. VIGIL, CITY CLERK) (Postponed at April 13, 2011 City Council Meeting) (Postponed at April 27, 2011 City Council Meeting) (Withdrawn by Applicant)**

I. ADJOURN

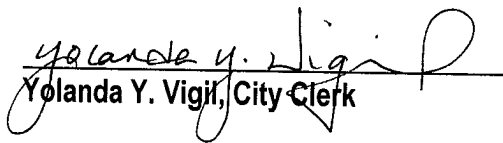
The was no further business to come before the Governing Body, and upon completion of the Agenda, the meeting was adjourned at approximately 10:30 p.m.

Approved by:



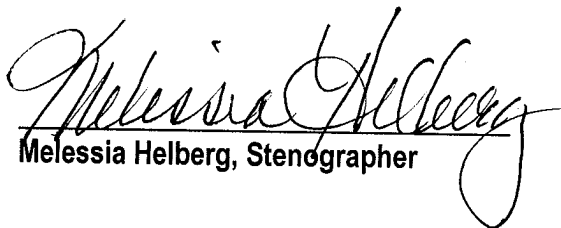
Mayor David Coss

ATTESTED TO:



Yolanda Y. Vigil, City Clerk

Respectfully submitted:



Melessia Helberg, Stenographer