

MINUTES
VILLAGE OF LOS RANCHOS DE ALBUQUERQUE
6718 RIO GRANDE BOULEVARD N.W.
BOARD OF TRUSTEES REGULAR MEETING
APRIL 10, 2013 - 7:00 p.m.

Present:

Larry P. Abraham, Mayor
Mary Homan, Trustee
Don Lopez, Trustee / Mayor Pro Tem
Pablo Rael, Trustee
Tim McDonough, Trustee

Kelly S. Ward, Administrator
Annabelle Silvas, Clerk
Bill Chappell, Attorney
Linda Seebach, P & Z Director
Nancy Haines, Treasurer

Mayor Abraham called the meeting to order at 7:00 p.m.

1. CALL TO ORDER

A. APPROVAL OF AGENDA

MOTION: Trustee Lopez moved approval of the Agenda. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously 4-0.

B. PRESENTATION AND UPDATE OF 2013 LAVENDER IN THE VILLAGE FESTIVAL-KATIE SNAPP

Katie Snapp gave an update to the Board on the 2013 Lavender Festival.

C. PROCLAMATION PROCLAIMING JUNE 2, 2013 AS GAY LESBIAN, BISEXUAL, AND TRANSGENDER PRIDE DAY

Mayor Abraham proclaimed June 2, 2013 as Gay Lesbian, Bisexual, and Transgender Pride Day.

2. PUBLIC COMMENT PERIOD

Michelle Clark, teacher at North Valley Academy said they have applied for a Farm to School grant and asked for the support of the Village, because in order to be eligible, they must have community support.

3. CONSENT AGENDA

There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A. MINUTES – MARCH 13, 2013 – REGULAR MEETING
- B. DEPARTMENT AND COMMITTEE REPORTS
 - 1. ANIMAL CONTROL

MOTION: **Trustee Homan** made the following corrections: In the March Board of Trustees meeting minutes she was listed as present and excused. She requested this be corrected to only state she was excused. **Trustee Homan** moved approval of the Consent Agenda with the correction stated in the minutes. **Trustee Rael** seconded the motion.

VOTE: The motion carried unanimously 4-0.

4. REPORTS

A. MAYOR'S REPORT

Mayor Abraham reported on the following:

- He thanked the Village's legislators and governor for the work they have recently done in Santa Fe. Capital outlay projects were pushed through and the Village received a budget for the Fourth Street Improvement Project.
- The Village is continuing Fourth Street visionary improvement meetings regarding planning for the project.
- He encouraged everyone to visit the Village's new website explaining that it has a new modern look, user-friendly, and encompasses the Village atmosphere.
- The Village's Easter egg hunt at Hartnett Park was very successful with the help of the Bernalillo County Fire Department. The Easter bunny arrived inside the fire truck waving to the hundreds and hundreds of kids and parents. Video and photos of the event can be found on the Village website or Facebook page.
- Enrollment is now closed at Cottonwood Classical Preparatory School after the lottery draw on Monday, April 1, 2013. All students have been notified by phone and by email. Cottonwood Classical Preparatory School will be moving to Jefferson and Paseo del Norte soon.
- The last winter Growers' and Arts/Crafts Market will be held on Saturday, April 13 from 10:00 a.m. – Noon. The regular weekly season begins on Saturday, May 4 from 7:00 a.m. – Noon.
- There is a Mayors' caucus on Thursday, April 11, with special guest Timothy Parker, the acting Department of Transportation District 3 Engineer.
- The MRGCD Board of Directors election will be held at Village Hall on Tuesday, June 4. Jim Roberts and Karen Dunning is running for Position 3 and Adrian Oglesby is running for Position 4.
- Lorilee McDowell incurred some serious injuries during a recent fall where she broke both of her legs. She is currently in the hospital and will soon be recovering in a rehabilitation center as she begins to regain her mobility.
- Fred Radosevich, the Village's Public Safety Director, has accepted a position with the Town of Edgewood as their new police chief. His last day with the Village was on Friday, March 29.

B. ADMINISTRATOR'S REPORT

Administrator Ward reported on the following:

- He said he has been working diligently on legislative issues.

C. PLANNER'S REPORT

Planner Seebach reported on the following:

- EPA has not yet scheduled the Public Meetings for the new Storm Water Permit. The tentative schedule is to be published in the Federal Register at the end of April, and the final schedule at the end of June. The Village will only have 60 days from issuance of the permit to submit it's new Storm Water Management Plan, so even though the permit is not in final form now, she is working on devising Best Management Practices for the requirements. If they are worked out according to the draft, then the Village can put them in final format to submit the permit.
- The EPA Storm Water section has been updated on the new Village website and is currently working on the yearly report for EPA that is due at the end of April.
- The Village turned over six new cases for sanitary sewer connection to Attorney Chappell. Three new homeowners connected this month; connection was in abeyance pending sale.

D. LEGAL REPORT

Attorney Chappell reported on the following:

- He said he has been working on sewer issues and other legal matters of the Village.

5. FINANCIAL BUSINESS

A. CASH REPORT – MARCH

Treasurer Haines reported that the Village's ending cash balance as of March 31 was \$6,164,725.16, which represented an increase of \$118,329.71 from the prior month. The year to date excess of revenues over expenditures is \$782,193.72. There were no unusual or significant items this month.

MOTION: Trustee Lopez moved approval of the Cash Report. **Trustee Rael** seconded the motion.

VOTE: The motion carried unanimously 4-0.

B. DISCUSSION AND APPROVAL OF PROPOSED INTERIM BUDGET FOR FISCAL YEAR 2013-2014

Administrator Ward said the final budget will be brought to the Board for approval at the June 2013 meeting. It is due to the Department of Finance and Administration (DFA) by July 1, 2013. He said the Village takes what is expected to be the final expenditures and uses those as a point of reference for the next year. The Village is expecting a general inflation growth in expenditures and is currently aware of a few things such as healthcare, retirement, etcetera. The interim budget does not include any capital expenditures. In the general fund section, the Village made an assumption on salaries of a 5% increase across the board to get a gauge of where the Village would be for budgeting purposes. The Village is estimating that it will finish the 2013 FY with a cash equivalent in the general fund of \$3,778,661.00. Spending anticipations are presented in column B of the report and the Village is expected to finish with a cash balance on June 30, 2013, of \$3,385,680.00.

These numbers are used for the proposed budget. Starting with \$3,385,680.00 and estimated revenues being down slightly, the Village is anticipating \$2,651,670.00 in general fund revenue and the expenditures showing the inflation based on the costs the Village is anticipating. Expenditures of \$1,690,451.00 for general fund expenditures of general operating of government with a surplus of \$961,000.00 anticipated for the year end.

Administrator Ward also said there was a change in the PERA retirement when a bill went through the legislature that Governor Susana Martinez signed that mandates that the employees share contributions go up. This means it is going from 9.15% to 10.65%. The issue for the Village is whether they should pick-up a portion of the contribution. Currently, the Village picks up 75% of the employees contributions. The resolution reads that the Village will pay 75% under which the municipal employer contributes 9.15%. If the Board wishes to change the percentages, the Village will need to present a resolution amendment that states the changes. If not, then the employees would need to pay an additional 1.5% out of their salaries towards PERA. At the current payroll, the cost would be about \$5,000 per year.

Trustee Homan said she would like to see this item on the agenda for the June meeting so it can be openly discussed.

Trustee McDonough asked if the Village had any feedback from employees on the matter.

Administrator Ward said the item was brand new and has not discussed it with any employees yet.

MOTION: Trustee Homan moved approval of the Interim Budget. **Trustee McDonough** seconded the motion.

VOTE: The motion carried unanimously 4-0.

6. PUBLIC HEARINGS AND APPLICATIONS

A. A REQUEST BY BOB BOWERS AGENT FOR RHB INVESTMENTS, LLC FOR A MASTER WINE GROWERS LIQUOR LICENSE APPLICATION # 845201 NM ALCOHOL AND GAMING DIVISION. THE PROPERTY IS LOCATED AT 6136 C 4TH STREET NW AND IS LEGALLY KNOWN AS LOT A-2 OF REPLAT OF BLOCKS A-1 AND B-1, NOW BLOCKS A-2 AND B-2 BOWERS SUBDIVISION, BERNALILLO COUNTY, NEW MEXICO AS THE SAME IS SHOWN AND RECORDED IN THE RECORDS OF THE CLERK OF BERNALILLO COUNTY, NEW MEXICO ON MAY 7, 1986 VOLUME C30, FOLIO 93. THE PROPERTY CONTAINS 4.9016 ACRES MORE OR LESS. LA BELLA VINO WINERY

Attorney Chappell swore in those who would be speaking on item 6.A. and 6.B.

Planner Seebach stated that the application for a Master Wine Growers Liquor License in the C-1 Zone of the Fourth Street Commercial Corridor and Character Area is to have a facility for the Bowers complex by the bowling alley where he is going to manufacture and bottle wine. There is no on-site service, tasting or sales at this time. The Planning and Zoning Department recommends approval.

Trustee Rael asked if the Village would be receiving gross receipts from it.

Planner Seebach said Mr. Bowers and the Village have been discussing it but there is no answer at this time.

Robert Bowers, resident of 8621 Rio Grande Boulevard NW, said he wanted to start this business about three years ago but the process of getting the liquor license through the state and federal has taken longer than expected. He said he will be setting up a small winery within the property so he can develop his own label of wine. The state is currently limiting him to approximately 300 gallons of wine per year. Gross receipts tax is currently being discussed with the Village and with the City of Albuquerque but his manufacturing location is in the Village but his sales location is in the City of Albuquerque.

Trustee McDonough asked if the liquor license the Board is considering allows Mr. Bowers to consume or sell liquor at the manufacturing location in the Village whether that is his intention or not.

Planner Seebach confirmed that the approval would allow him to do such.

Trustee Homan asked Mr. Bower's if his wine label would indicate that the wine is made in Los Ranchos.

Robert Bowers said his labels would say it was made in Los Ranchos.

MOTION: Trustee Lopez moved to approve the Master Wine Growers Liquor License in the C-1 Zone of the Fourth Street Commercial Character Area with the following findings: (1) Public notice requirements have been met as per the New Mexico Alcohol and Gaming Division by publication in the Albuquerque Journal on March 26 and April 1, 2013. (2) Public Notice was sent by mail to all neighbors within 400 feet of the property on March 22, 2013. (3) The property is located in the C-1 Zone of the Fourth Street Commercial Character Area and Corridor. (4) Wineries are an allowable use in the C-1 Zone with a Conditional Use Permit. (5) No adverse public comment was received on the application during the fifteen (15) day public notice period and the Conditional Use Permit was approved on January 7, 2013. (6) The 2020 Master Plan Overall Village Goals 1.2.2 The Goal is to create and promote the Village as a destination point where visitors and residents alike want to be and can take part in the Village lifestyle. (7) Section 8, 8.2.1 Commercial Objectives: Create a business climate in which businesses flourish; Focus Village commercial activities in the Village Center, Fourth Street and the Transit District; Make the Village a shopping destination; Encourage stores of a unique character that harmonize with the scale and nature of the Village whether local businesses, national businesses or new, compatible commercial activities.

Trustee Rael seconded the motion.

VOTE: The motion carried unanimously 4-0.

B. AN APPEAL BY HUI-CHIEN SHEN, PROPERTY OWNER, OF MANDATORY SANITARY SEWER CONNECTION AS REQUIRED BY ORDINANCE 231, SECTION 4(B) AND SECTION 4(B)(1). THE PROPERTY IS LOCATED AT 8646 RIO GRANDE BLVD. AND IS LEGALLY KNOWN AS LOT B & C LANDS OF SCOTT HENRY OF PLAT OF LOTS A, B, C, AND D LANDS OF ANNIE ROBERTSON, BEING A REPLAT OF TRACT 19A AS SHOWN ON M.R.G.C.D. MAP NO. 25 WITHIN THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, JUNE 1987 FILED ON FEBRUARY 10, 1988 VOLUME C35, FOLIO 167. THE PROPERTY CONTAINS 1.5 ACRES MORE OR LESS. SSS-13-01

Planner Seebach said the appeal of sanitary sewer connection is a straight line without interference of buildings of approximately 117 feet from the connection point to the sewer stubout. The appellant began connection two years ago with obtaining the required Albuquerque Bernalillo County Water Utility Authority account, obtaining the Bernalillo County Sanitary Sewer Line permit, and then hired RC Septic to make the connection. RC Septic began the excavation at his house, went out to the sewer towards the property line, but was unable to find the stubin. In April 2012, Code Enforcement Officer Keen Heinzelman informed the appellant that the only way a vacuum sewer system can be connected is to start at the connection point by the manhole, go down, and then trace the stubout towards the house. The appellant got a quote from TLC, which is a bonded company, that was able to do the excavation in the right of way but the appellant declined to accept the quote and did not hire the bonded contractor who could perform and complete the connection. Planner Seebach recommends denial of the appeal with findings.

Mayor Abraham asked Hui-Chien Shen to elaborate on why he feels like he should not have to hook-up his sewer.

Hui-Chien Shen, resident at 8648 Rio Grande Boulevard NW, said he is usually referred to as Bill Shen. He said he would like to appeal the final administration determination dated on January 29, 2013, based on multiple reasons. Mr. Shen said the first reason is unlawful taking of his assets. He said his obligation to connect to existing sewer system ends at his property. Mr. Shen also said he paid the utility expansion charge of nearly \$2,000, presumably for a service brought to his property, but he is not sure what the \$2,000 charge was for if they could just ignore that. He said he disagrees that he has to pay for the excavation to hook-up to the sewer line when it is outside of his property and is a deficiency in the installation of the sewer line. He said he feels like he is being forced to pay for public infrastructure improvements at his expense. The second reason for his appeal is undue hardship was leveled on him as a property owner. He said he feels like he has done his due diligence in complying with ordinances. Thirdly, Mr. Shen feels like this matter is not fair and equal treatment because he recently learned that Liz Sanchez at 7622 Rio Grande Boulevard was granted a waiver. He said he is currently talking with Ms. Sanchez's lawyer in order to learn more details and facts about her case, but does not know if his situation can be compared to her situation. The fourth reason for his appeal, he said, is the violation of the grandfather clause. The fifth and final reason is that during a conversation with Planner Seebach on January 29, he said she mentioned that the original sewer contractor was negligent in installing the missed connections to many homes and the as-built drawings are incorrect in many instances.

Mayor Abraham asked if anyone in the audience would like to speak in favor or the appeal.

Christian Reedy, resident at 8642 Rio Grande Boulevard NW, said he was in attendance for the purpose of community and moral support. He said when this project transpired, the company came in with a big backhoe, dug a big hole in the entire northside of his yard, he took down some fences, his wife used to always plant a beautiful flower garden that has not been able to be planted in three years, and when the problems came up, he said he seemed to do due diligence to no avail. He said Mr. Shen has explained many irregularities in the as-built drawings. Mr. Reedy said, at one point, there was an offer about sending a camera up the pipe in order to actually see where the stubout was located. He said that offer seemed logical to him, but that he did not think it was fair that the Village wants Mr. Shen to pay for this additional work.

Mayor Abraham asked if anyone in the audience would like to speak in opposition of the appeal.

No audience opposition was made. The open hearing was subsequently closed.

Trustee Homan asked Administrator Ward if the Village was the one who originally contracted with the engineer that did the work at that time and if the Village had any recourse.

Administrator Ward said he did not know what the original arrangements were but that he would assume that the Albuquerque Bernalillo County Water Utility Authority would have handled all of it.

Trustee Lopez asked if the specifications required the stubout go to the property line. He said, because if they did, and it was not done, a potential problem is present.

Administrator Ward said he was unable to confirm earlier plans.

Attorney Chappell said the ordinance anticipates that the stubout point may not be at the property line. He said the 200 feet is measured from the cleanout point to the public right of way. He also said that if the stubout line is not at the public right of way, it extends along the public right of way and that is how the 200 feet is measured. The ordinance anticipates that the stubout line will not be at the property line and there may be some requirement for construction of the line inside the public right of way if the right of way can be obtained.

Trustee Lopez said that assuming that information is correct, who shares the liability for damages?

Attorney Chappell said the contractor gets the permit to work in the public right of way which is the reason why the contractor must be bonded in order to do the work. He said the original contractor was not bonded. Attorney Chappell said the more substantive question is if the City of Albuquerque or the Albuquerque Bernalillo County Water Utility Authority placed the sewer line in and made these errors in terms of where the

stubouts were, whose responsibility is that and certainly it was not the Village who created the specifications or plans. He said the answer to this question is still up in the air.

Mayor Abraham said there are some engineers and Trustees who are very familiar with this topic on the Board and asked them to enlighten everyone.

Trustee McDonough asked Trustee Rael if it is a new sewer connection, the homeowner pays the UEC charge but, on top of that, does the homeowner pay for the physical connection to the sewer to their property?

Trustee Rael said no, his understanding is they only take it from the property line and it is the responsibility of the Albuquerque Bernalillo County Water Utility Authority to put it in. He said he recalls with his own property, they came and asked him where he wanted his stubout. He said Mr. Shen did not own the property at that time and the original homeowner should have discussed it with the contractor on where they needed it placed.

Trustee McDonough asked Mr. Shen if all the excavation was done on his property because they were not a bonded contractor and, therefore, did not have access to the public right of way.

Bill Shen confirmed that all the excavation was done inside his property line and said he believed that he was legally required to do and did not think a bonded contractor was needed to do the excavation off the public right of way.

Trustee McDonough said it could be that the stubout is a foot short of the homeowners property line.

Bill Shen said he could assure him that the stubout is not a foot short of his property line because he had to physically stop the contractor from excavating under the brick wall.

Trustee McDonough rephrased his comment and said it could very well be that the stubout did not quite make it to the property line.

Trustee Rael asked Mr. Shen if the contractor did the digging on his property only at the point where the as-builts showed the stubout was or did they dig some other place?

Bill Shen said his contractor dug around the as-built area and people came out from the Albuquerque Bernalillo County Water Utility Authority and advised his contractor how it should be done.

Trustee Homan said she was sympathetic to what Mr. Shen has experienced and said she thought he had been trying to do the right thing and applauds his due diligence to this point.

Mayor Abraham said that while he agrees, the Village expects every homeowner to have the burden of hooking up to the sewer system, whatever that burden may be.

Attorney Chappell said, with this circumstance, the Village might defer this appeal. In the interim time, have the appropriate parties make contact with the Albuquerque Bernalillo County Water Utility Authority to see if there is any way they are able to step up and help resolve the problems because that is not a condition of requirement to hookup. In this case, it may be appropriate to push the Albuquerque Bernalillo County Water Utility Authority a little bit and ask them what they can do to help solve the problem. He recommends the request come from the Village instead of Mr. Shen.

Trustee Homan made a motion to defer the hearing until the June 2013 meeting. **Trustee Rael** seconded the motion.

VOTE: The motion carried unanimously 4-0.

7. **OLD BUSINESS**

There was no old business.

8. **NEW BUSINESS**

A. DISCUSSION AND APPROVAL TO ADVERTISE IN SUMMARY AN ORDINANCE AMENDING CHAPTER 31, SECTION 2, DEFINITIONS, AND SECTION 6 A-1 - AGRICULTURAL/RESIDENTIAL ZONE, AND AMENDING ORDINANCES 183, 192, 193, 195, 209, 216, 218 AND 230 FOR CLARIFICATION AND CORRECTIVE PURPOSES.

Planner Seebach said the majority of the items are simply housekeeping items having to do with numbering, duplicate sections, etcetera. There are also a few agricultural and commercial references to specific definitions that need to be clarified and corrected on stables and academies. A few things were added such as site builds and manufactured homes because the Village does not have an ordinance or definite regulation within a zone that prohibits trailer houses or manufactured homes on residential lots. Also added riding stables and academies, bed and breakfasts, single story residential home height regulations, open fencing, solid walls, prohibition of constinia wire in the A-1 zone,

maximum heights of gate pillars, and clarification of existing buildings and their demolition.

Trustee Homan said there is a stricken section that said the minimum side setbacks that were set at 10 foot should now be 15 foot setbacks. She asked Planner Seebach why this changed and if it would create a problem legally because it was not advertised as a change that might be challenged. She also asked if the people who have a 10 foot setback, but not quite a 15 foot setback, would be grandfathered in or if the wording should revert back to stating a 10 foot setback.

Planner Seebach said the section Trustee Homan is referring too was an error made in 2007 that was an amendment to an amendment where the 10 foot setback was taken out in several sections but was mistakenly not updated in other areas of the ordinance.

Attorney Chappell said it was an amendment that was advertised as an amendment to the ordinance. He said it has substantive changes in it and is not part of a codification project. The issue is that the ordinance has two sections, one section called for a 10 foot setback and the other called for a 15 foot setback. The newer ordinance provision called for 15 foot but the 10 foot was not deleted in another section. Currently, we have two different setback requirements for the same zone. He said this would be advertised as a text amendment to the ordinance.

Planner Seebach said since 2007, the Village has enforced a 15 foot setback because that was what was understood as the correct setback.

Trustee Rael said the in-home care permit was put in because Mr. Lasicka was very sick at the time and he recalls the need to put in an ancillary kitchen because of his illness, but in-home care does not always require someone to move in to the residence in order to take care of someone. Trustee Rael is asking the in-home care permit to be better defined because if someone does not move in to care for someone, he said he does not believe someone should have to pay a \$100 fee for the permit.

Administrator Ward said the only time someone would have to come in and get the \$100 permit is if someone wanted to install an ancillary kitchen in a residential home. He said the Village would clarify the permit by changing the title to "live-in home care".

Trustee McDonough said the 40 foot windmill/watermill is new. He asked if there was a need to allow 40 foot tall windmills in the Village.

Planner Seebach said that was in the original 183 ordinance. She said the Village only added the word "wind". Watermills were already part of the 183 ordinance.

MOTION: Trustee McDonough moved approval to advertise the Ordinance in summary. **Trustee Rael** seconded the motion.

VOTE: The motion carried unanimously 4-0.

9. TRUSTEES INFORMAL DISCUSSION

Trustee Lopez said he brought up several months ago the spotty AT&T cellular service coverage. He said it is still pretty bad.

Administrator Ward said AT&T was working on the cell tower on April 9 and April 10. AT&T said 13 towers in the New Mexico area are getting failures and that it is an AT&T problem nationwide. They are working on repairs for the faulty equipment.

Trustee Homan said she was happy to see Michelle Clark with North Valley Academy School in attendance at the Board of Trustees meeting tonight. She said she had been working with them on the grant proposal and their new focus on health and wellness. She was in Washington D.C. at the National League of Cities event and was able to discuss message of the New Mexico Municipal League with the legislators and congressional senators. She also said she has been attending a

number of district meetings, including a recent district meeting in Rio Rancho with Trustee McDonough. She said there was one big loss in the legislative session in regards to the provision of the tax reform but otherwise was successful in many ways. Trustee Homan also said that several sessions ago, she had a desire to start a Youth Council. She said there has been no action on it yet but that she would speak with Mayor Abraham and Administrator Ward about it soon.

Mayor Abraham suggested that flowers be sent to Lorilee McDowell while she is recovering from her injuries.

Trustee McDonough said he agreed that flowers should be sent to Lorilee McDowell.

Mayor Abraham said there would be no Board of Trustees meeting in May. The meetings will resume in June 2013.

10. ADJOURNMENT

The meeting was adjourned at 9:09 P.M.

APPROVED by the Board of Trustees of the Village of Los Ranchos de Albuquerque this _____ day of _____, 2013.

ATTEST:

Annabelle Silvas, Village Clerk