

MINUTES
VILLAGE OF LOS RANCHOS DE ALBUQUERQUE
6718 RIO GRANDE BOULEVARD N.W.
BOARD OF TRUSTEES REGULAR MEETING
AUGUST 14, 2013 - 7:00 p.m.

Present:

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

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

Mayor Abraham announced that the Board of Trustees met in a closed session at 6:00 p.m. and only those matters that were on the posted notice were discussed.

MOTION: Trustee Lopez moved approval of the closed meeting statement. **Trustee Rael** seconded the motion.

VOTE: The motion carried, 3-0.

1. CALL TO ORDER

Mayor Abraham called the meeting to order at 7:13 p.m.

A. APPROVAL OF AGENDA

MOTION: Trustee McDonough moved approval of the agenda with agenda item 6.C. deferred to the next Board of Trustees meeting. **Trustee Lopez** seconded the motion.

VOTE: The motion carried, 3-0.

2. PUBLIC COMMENT PERIOD

There were no public comments.

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 – JULY 10, 2013 – REGULAR MEETING
- B. DEPARTMENT AND COMMITTEE REPORTS
 - 1. ANIMAL CONTROL

Trustee Rael stated that he had a correction to the minutes on page 4, line 11, correct the amount from \$187,829,26.00 to \$187,829.26.

MOTION: Trustee Lopez moved approval of the consent agenda. **Trustee McDonough** seconded the motion.

VOTE: The motion carried unanimously, 3-0.

4. **REPORTS**

A. **MAYOR'S REPORT**

Mayor Abraham reported on the following:

- There will be a retirement party for Annabelle Silvas on September 7, 2013, at 6:00 p.m. at the Agri-Nature Center. She is the first employee to ever retire from the Village of Los Ranchos.
- The Village has been talking to Undersheriff Jason Katz with the Bernalillo County Sheriff's Office regarding how their deputies interact with Village departments.
- The Los Ranchos Growers' Market is doing well and has been well attended lately.
- The Bernalillo County Fire Department has extended an offer to someone for the Fire Chief position; however, the name of the person has not yet been announced but should be in the next few days.
- There is a book called *The Barns of the Land of Enchantment* by Jerry Davis that includes nine different barns from Los Ranchos, with a history of each barn.

B. **ADMINISTRATOR'S REPORT**

Administrator Ward reported on the following:

- There was some minimal damage in the Village due to the recent rainstorms including some flooded streets and broken trees. The Village has been busy chipping tree branches and doing general cleanup. Southwest Sewer came out and pumped streets that were full of water and cleared some French drains in the area.
- The Village met with Thad Porch from Ricci, Porch and Company about the entrance conference.
- The Village was unsuccessful with the appeal to the EMS Bureau about their decision in not granting the Village EMS monies. Their stance was that Bernalillo County is already a recipient of the money and therefore, the Village cannot also be a recipient of the EMS fund even though Bernalillo County services the Village. Bernalillo

County's funding did not increase since the maximum a recipient can receive is \$20,000.

C. PLANNER'S REPORT

Planner Seebach reported on the following:

- The Calle del Pajarito Neighborhood Association will partner with Querencia Green for rainwater harvesting and the Small Scale Green Infrastructure demonstration project in the Village. The first meeting will take place on Saturday, September 7, from 9:00 a.m. – 1:00 p.m. at 501 Calle del Pajarito. Attendees will map storm water issues and identify a project that can result in benefits for the neighborhood.
- Two new housing starts for the month of August.
- She attended the AMAFCA 2013 Planning Meeting for the North Valley on August 6. The Garduno Storm Drain System is ranked number one priority with only six projects ranking #1 in the next year. The Village is working on a proposal to discuss with AMAFCA.
- She also attended the EPA Urban Waters Federal Partnership Program last week.
- Attorney Chappell has been working with the Village on a couple of cases and finalizing codification for Phase I and Phase II.
- The Village has a discussion draft for the Middle Rio Grande Storm Water Technical Advisory Group that is a coordinated effort among all the entities that does not cost the Village anything. The purpose of this group is to share information and data and she strongly recommends that the Village participate.

D. LEGAL REPORT

Attorney Chappell reported on the following:

- The Village is still waiting on a decision on the OMNI litigation case from Judge Brickhouse. OMNI Corporation continues to file motions and applications pending the decision.
- As for the status of the codification, both the codification numbers and the technical changes with internal references are ready to be submitted. Phase I changes all the numbering systems and Phase II is a mimic to the entire codification to try to fix the technical things. Phase III deals with the substantive changes and provisions.

5. FINANCIAL BUSINESS

A. CASH REPORT – JULY

Treasurer Haines reported that the Village’s ending cash balance as of July 31 was \$6,431,797.33, which represented a decrease of \$35,896.18 from the prior month. The year to date deficit of expenditures over revenues is \$35,896.18. She noted that, historically, July has seen a deficit because the Village has prepayments and experiences certain timing issues such as health insurance premiums of \$37,000, the down payment of audit fees, and \$110,000 for the Bernalillo County Fire Department contract.

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

VOTE: The motion carried unanimously, 3-0.

B. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2013-8-1-AUTHORIZING THE VILLAGE OF LOS RANCHOS TO PICK-UP SEVENTY-FIVE PERCENT OF THE PERA MUNICIPAL GENERAL MEMBER PLAN 2 MEMBER CONTRIBUTIONS IN EFFECT JULY 1, 2013

Administrator Ward said, as of July 1, 2013, PERA employee members are required to contribute an additional 1.7%. The Village, for some time, has covered 75% of the employee’s contribution to PERA. This resolution would have the Village pick up 75% of that additional cost. The budget was approved with the Village picking up the additional amount.

MOTION: Trustee Lopez moved approval of Resolution No. 2013-8-1. **Trustee McDonough** seconded the motion.

ROLL CALL VOTE: Trustee McDonough-aye; Trustee Lopez-aye; Trustee Rael-aye.

VOTE: The motion carried unanimously, 3-0.

6. PUBLIC HEARINGS AND APPLICATIONS

A. AN APPEAL TO THE VILLAGE OF LOS RANCHOS BOARD OF TRUSTEES OF PLANNING AND ZONING COMMISSION DENIAL ON JULY 9, 2013, AGENDA ITEM 4.A OF VARIANCE V-13-03, A REQUEST BY ROBERT O. SMITH, AGENT, ON BEHALF OF OWNERS GREGORY L. BIEHLER AND HELEN L. STIRLING, FOR A VARIANCE FROM ORDINANCE 183 AS AMENDED, SECTION 6 (E) AREA REGULATIONS (2)(3) REAR SETBACK SHALL BE TWENTY-FIVE (25) FEET TO ALLOW FOR A TEN (10) FOOT REAR SETBACK IN THE A-1 ZONE OF THE NORTH RIO GRANDE CHARACTER AREA. THE PROPERTY IS LOCATED AT 8212 RIO GRANDE BLVD. AND IS LEGALLY KNOWN AS LOT 1, PLAT OF NAT’S PLACE SITUATE WITHIN THE VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND

DESIGNATED ON THE PLAT FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON AUGUST 11, 1993. THE PROPERTY CONTAINS 1.0535 ACRES MORE OR LESS. V-13-03.

Planner Seebach said there are two issues with this appeal. The first is that by using the original language concerning the north Rio Grande character area setback, and measuring a straight line from the nearest adjacent houses, it places a much larger burden on some lots than it does on other lots. The Village will be looking at this issue in phase III of codification. She said she is doing a study of what that line looks like with the setbacks on north Rio Grande and it will be ready for the Board of Trustee's consideration at next month's meeting. The larger issue in this appeal is that for the open space on Rio Grande 191 gave a government compensation for development rights and that was a preservation of development rights behind the north Rio Grande setback. In denying the variance for the rear setback, the building area of the lot was reduced to .116. Therefore, the Planning and Zoning Department strongly recommends that the Board uphold the appeal, overturn the denial, which is contradictory to preservation of development rights of 191.

Trustee McDonough said the language in the setback shows a line between the two adjacent houses. He asked if that was only in ordinance 191 or had that existed in prior ordinances?

Planner Seebach said it was originally in Ordinance No. 2 in 1959, Ordinance No. 25 in 1972, and Ordinance 58.

Trustee McDonough asked if the 280-foot setback had always been followed?

Planner Seebach said yes.

Greg Biehler, appellant and resident of 8212 Rio Grande Boulevard NW, said they have lived in the same property for more than 25 years in Los Ranchos. He said for many years he has wanted to build a garage. He said he submitted the application to the zoning board, in which he says it was turned down for arbitrary reasons. He said if you refer to the minutes of the zoning board, they appeared to be focused on incorrect facts. He said, for example, they continually refer to a 6-car garage, which it is not. He said he is trying to build a modest garage and wants to build in the back of their house where it does not interfere with any of his neighbors. He said he applauds the ability of the community to enjoy the open space and tries to honor that by having the front of his property open and clear. He said that with the statute and policy of the Village, it seems a trail is what is looked for, and the Village needs to cut homeowners some slack and give them the opportunity to build on their property to the maximum amount of density. Secondly, the Planning and Zoning Commission appeared to believe he was in the wrong zoning area. He said they kept talking about the wrong setback. When making the decision, the Planning and Zoning Commission seemed wrong due to incorrect facts. He said he chose a location for his garage that he and his wife believed was best fit, not only for the character of the neighborhood, but also for the neighbors and the community at large. He said they tried various options to try and put the garage in a different place within the setback, but could not do it. The appellant is requesting a small variance of 15-feet so he can increase the beauty by putting a couple of cars back in the garage helping to make the property even more open and clear.

Trustee Rael asked the appellant if the garage was the only structure he was planning to build in the back of his property.

Greg Biehler said this garage was the only structure he was planning to build in the back of his property.

Trustee McDonough asked Planner Seebach if the overall development allowed with the FAR is 8900 square feet.

Planner Seebach said that is correct. She said their maximum allowable density ratio is 8923 feet of floor area.

Trustee McDonough asked if it exceeds the building area considering the front setback and a 25-foot rear yard setback.

Planner Seebach said she was not sure exactly, but that they are not allowed to put the garage where it was optimum for them to put it without this required rear setback.

Trustee McDonough said that when he looks on Google, there are a couple of structures that are in front of Greg Biehler's house. He asked Mr. Biehler what the structures were exactly.

Greg Biehler said there is an old shed that has been there for many years since they bought the property in the 1930's that his feral cat lives in. There is also a carport next to the shed that has been there for over 20 years.

Mayor Abraham asked Planner Seebach what the actual front setback is right now, as the Village's ordinance states.

Planner Seebach said, according to the Village's ordinance, it is a straight-line measurement between the adjacent houses.

Mayor Abraham said he had thought the ordinance went back to 25-feet for everything north of Chamisal, but obviously that is not that case. He said the Village is still holding people to straight-lines to fronts of houses.

Planner Seebach said Mayor Abraham was correct.

Trustee Rael asked Mr. Biehler is there were any objections from the neighbor behind him.

Greg Biehler said there were no objections from any neighbors on any sides.

Trustee McDonough said the Village has discussed variances and hardships before and there was a long discussion about what is a hardship and the consistency in how the Village applies all of their decisions. He said when Mr. Biehler purchased the property; it had all of the setback requirements on it.

Helen Stirling, spouse of appellant and resident of 8212 Rio Grande Boulevard NW, said that the property did have all of the setback requirements on it in 1986. She said the original house stood in front of where the present house is currently. It started on a concrete lot in the 40's and 50's and was added on to over the years. Ned Kaplan, the person they purchased the house from, had it on 2-acres and fixed it up overtime prior to them purchasing it and the shed went with it. She said when she and her husband did some remodeling to the house, including updating the wiring, plumbing, and roofing, it was over \$100,000 before anything was even remodeled and changed. She said that house was finished in 1994. When the carport went up, it was during the period when the measurement line did not apply. Mr. Stirling said the place where they want to build the garage is the only place they could really build it.

MOTION: Trustee Lopez moved to uphold the appeal and overturn the denial of the Planning and Zoning Commission denial on July 9, 2013, Agenda Item 4.A of Variance V-13-03, a request by Robert O. Smith, Agent, for a Variance from Ordinance 183 as amended, Section 6 (E) Area regulations (2)(3) Rear setback shall be twenty-five (25) feet to allow for a ten (10) foot rear setback in the A-1 Zone of the North Rio Grande Character Area with the following findings: By Ordinance 191, all properties affected by the Rio Grande Blvd. setback may be developed to the maximum overall density that would have otherwise been allowed on the property, however, all development must take place behind the *{Rio Grande Blvd.}* setback. The overall development is allowable at 8,923 square feet. A total of 5,518 square feet is requested. This is far below the allowable Floor Area Ratio, which is the maximum overall density that would have otherwise been allowed on the property. By imposing all the setback requirements of Ordinance 191 and Ordinance 238 the buildable area of the lot is reduced to approximately .2115 acres of the 1.0535-acre lot, contrary to the preservation of development rights granted by Ordinance 191. The Variance request meets the hardship requirements of Section 24(E)(3)(a) and (b). (a) The Variance is in conformance with the goals and policies of the Village Master Plan. 3.4.4 Open Expanse Goal: In recognition of the value of visually accessible open expanses to the character, atmosphere, and welfare of this valley area, the goal is to identify and encourage the preservation of open expanses, vegetation and wildlife to the greatest extent possible and in a manner appropriate to each sector of the Village. 3.4.5 Objectives: Maintain the 280-foot setback on Rio Grande Boulevard, Continue to utilize planning techniques for placement of structures on lots to maximize and preserve scenic views. The appellants honored the 2020 Master Plan and Ordinance 191 by recognizing the front setback from Rio Grande Blvd. as required and additionally placed their garage to maximize view corridors and maintain the views of the Sandia Mountains, including their own. (1) It is not contrary to the public interest; and (2) Owing to special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship. E(3)(b)(2) When compared to other land in the vicinity subject to the same provisions, the parcel is exceptional by reason of the condition or use of the parcel or of other land in the vicinity which condition or use existed when the provisions were adopted; The front portion of the lot is subject to the North Rio Grande Character Area setback requirement of a straight line measurement between adjoining houses, which places more of a hardship on some parcels than on other parcels subject to the same requirement. (6) The alleged hardship is such that relief is justifiable in accordance with the goals and policies of the Master Plan. The 2020 Master Plan, 2.0 Village Form, 2.1 Village Form Goal: The goal is to preserve and enhance the historic and "valley" character of Village neighborhoods, roadways, mixed

use centers and corridors. 2.1.1 Objectives. Neighborhoods: Preserve unique characteristics of Village corridors and character areas by encouraging openness, views of mountains and open expanses; Policy B. In each of the character areas, preserve the unique characteristics by recognizing and continuing the traditional land development patterns in the character areas, specifically with respect to street character, placement of buildings and setback requirements. Accordingly, the Variance request meets the hardship requirements of Section 24(E)(3)(a) and (b)(2) and (6).

Trustee Rael seconded the motion.

VOTE: The motion carried unanimously, 2-1.

B. A REQUEST BY JIM SHULL, AGENT FOR LOS RANCHOS BREWING, LLC FOR A SMALL BREWER'S LIQUOR LICENSE AND A WAIVER AS THE PREMISE IS WITHIN 283.71 FEET OF A SCHOOL IN THE V-C ZONE OF THE FOURTH STREET COMMERCIAL CHARACTER AREA, APPLICATION # 856968 NM ALCOHOL AND GAMING DIVISION. THE PROPERTY IS LOCATED AT 404 OSUNA ROAD UNIT A & B AND IS LEGALLY KNOWN AS TRACT A-1-A-2, PLAT OF TRACTS A-1-A-1, A-1-A-2, B-2-A, B-2-B, AND B-C-2, NORTHDALÉ SHOPPING CENTER WITHIN THE ELENA GALLEGOS GRANT, PROJECTED SECTION 28 AND 29, T11N, R3E, N.M.P.M., VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO FILED 2-17-05. THE PROPERTY CONTAINS .6771 ACRES MORE OR LESS.

Planner Seebach said the Alcohol and Gaming Division has granted a conditional preliminary approval for the small brewer's liquor license pending a waiver of the 300-foot rule for schools measured by the property line to property line measurement. The standards that were set when the Board of Trustees approved the OM Indian Dining beer and wine license are almost identical to the situation that exists with the proposed brewpub where the distance to the corner of the Taft Middle School tract is approximately 283.72 feet. The distance to the actual school building is approximately 652.57 feet. There is another property separating the brewpub and the school, which are the Northdale Shopping Center in addition to a major street. These were the same conditions that OM Indian Dining had that were approved. Los Ranchos is a local option district and the board may approve the waiver. She said Mr. Shull has voluntarily limited his business hours from 3:00 p.m. – 11:00 p.m. Monday through Thursday and 3:00 p.m. – 12:00 p.m. on Fridays, and 12:00 p.m. – 12:00 p.m. on Saturdays, and 12:00 p.m. – 11:00 p.m. on Sundays. The Planning and Zoning Commission approved the conditional use and the condition on the conditional use was that there should be no loud speakers, music, or such noise associated with this conditional use permit. The department recommends approval of the small brewer's liquor license and the waiver as the premise is within 283.71 feet of a school.

Trustee McDonough asked if there is a written agreement of the shared parking.

Planner Seebach said there is a written agreement of the shared parking.

Trustee McDonough asked Planner Seebach if she felt the written agreement was enforceable in case there is a change in ownership down the road.

Planner Seebach said the agreement is with all of the Northdale Shopping Center. She said the tracts include Walgreens, Bank of America, and the property on Osuna including Taco Bell. She said it is all one big plat but on separate parcels.

Trustee McDonough asked if packaged sales was allowed with the type of license they are getting.

Planner Seebach said she believed it was on-site consumption only.

Administrator Ward said the applicant, Mr. Shull, could clarify the details in question but he believed customers would be able to do on-site tasting, by the glass, not packaged liquor like at a convenience store.

Trustee McDonough said he acknowledges that Mr. Shull voluntarily is limiting his hours but asked if the Village can enforce those hours.

Planner Seebach said the Village could not force him to limit his hours.

Attorney Chappell said the statute indicated that the Village could not impose the hours however, if the application is only for the hours indicated, it can be approved only for the hours that are requested.

Trustee McDonough asked if they would need to come before the board again if they want to change hours down the road.

Attorney Chappell confirmed.

Trustee Rael asked Attorney Chappell if Mr. Shull should have to come back to the Board, and the state says the Village cannot enforce hours, how would the Village put any restrictions on it?

Attorney Chappell said it may be difficult but that is something they can address. On the other hand, if they come back and want to change the hours, the Village can say no and deny the variance. The risk is, if the hours are critical for approving the variances to the distance, and those hours make it not feasible, then the Village probably has grounds but it is not very clear-cut.

Matt Meyers, attorney for Jim Shull, said that Attorney Chappell is correct that the local option district cannot put conditions in place, however, once Mr. Shull voluntarily puts these conditions in place, those then become a part of the approval. If they violate the conditions, then they violate the approval. There will be sales of growlers, and the state statute on small brewers licenses allows for a small brewer to sell growlers that they produce on-premise. He said there is a parking agreement put in place that was signed by Peterson Properties to allow parking on the lot to the north of the subject parcel and it was presented to the Village's Planning and Zoning Commission when they approved the conditional use for a brewpub at this area. He said he thinks Planner Seebach's report

gives a good understanding of why they believe that a waiver is appropriate. He said that it is closer to 300 feet, 285 feet to be precise, and is to the southeast corner of the tract. If you actually get to the classrooms, it is over 650 feet. He said the state statute that gives the Village the local option district the ability to waive the 300-foot requirement, also states that the Village has to have standards for the waiver, and they must be defined, and uniformly applied. In this case, he said the Village has defined it through practice, when the Board approved the OM Indian Dining Restaurant. He said that the Board took in to consideration that there was a road separating it from the school, the fact that the actual distance between the classrooms, and the part of the building that sells the liquor is actually more than 300 feet. He said this decision sets precedence that the local option district can use it to start defining the standards that can apply. He said that Mr. Shull has voluntarily agreed to limit his hours because the brewpub will not be open during school hours and feels that it justifies their waiver request. He said the property was zoned VC, which is Village Center, and that is the area of the Village that is designated for these type of unique uses that draw people in from the community. The notice requirements were met and he said, Planner Seebach also said this in her report. All of the alcohol servers at the brewpub will have to take alcohol serving classes where they learn they cannot serve anyone under 21, cannot serve to intoxicated people, and will learn the rules and regulations that they have to comply with.

Trustee Lopez asked when the business is planning on opening?

Jim Shull, agent of Los Ranchos Brewing, said the process is long. He said there is a Federal Brewers Notice that must be applied for, but is just waiting for the final approvals. He said he to receive his federal brewer's permit last week and is ready to open as soon as October 15, 2013.

Trustee McDonough asked if food would be served at the brewpub?

Jim Shull said yes, food would be served.

Trustee McDonough asked if the place had a kitchen.

Jim Shull said there was already a kitchen existing in the space.

Matt Meyers said they submitted a sample menu when they applied for the conditional use and said the Board could certainly review a copy of that.

Trustee Lopez said he thought it was important to have food there.

Trustee McDonough said he agreed.

Mayor Abraham said the only reason why Mr. Shull is in front of the Board tonight is because the waiver for the school of 283-feet. He asked if it were not for this, what other reasons would Mr. Shull be in front of the Board for?

Planner Seebach said they would be in front of the Board for the Village approval of the liquor license.

Mayor Abraham asked if anyone would like to speak in favor of the brewpub.

No one approached the Board.

Mayor Abraham asked if anyone would like to speak in opposition to the brewpub.

Attorney Chappell swore in those who would be speaking under item 6. B.

Randy Gallegos, resident of 501 Sandia View Road NW, said the real question was if the Village wants a brewpub in the Village but said he does not drink. He said by having the brewpub in the Village, a message is being sent to children. He said there is a law in the books to protect children of New Mexico. He said if the Board keeps varying it, then why is the law even there? He said that there is a very dangerous road, Chavez Road, separating the brewpub from the school but added that the brewpub is 5-feet to death. He said if anyone stands in that road for any length of time, then his or her life is in danger. He said the law is there to protect children. He said the Board turned down Walgreens when they asked to sell alcohol. He said whether people make their own alcohol or if it is packaged, it is still alcohol. He said he understands that Walgreens wanted to make more money and they saw that opportunity by selling packaged liquor, but the Village Board turned them down. He said he understands that small business relies on these opportunities but the laws are in place to protect children and the Village needs to ensure that no one gets hurt. He said that when school gets out at Taft Middle School, there are 40-50 kids around Walgreens, so thank goodness the Village did not approve the variance for Walgreens to sell alcohol. He asked the Board to please turn down the appeal for the variance.

Loretta Smith, resident of 536 Chavez Road NW, said she agrees with her cousin Randy Gallegos. She said that the New Mexico law states that measurement of the distance to a school is from property line to property line, not building to building. The property line ends behind Walgreens, she said. She said the Village denied Walgreens because of the 300-foot rule. Now, she said, voting on a variance is very hard for her to do when it was denied to Walgreens because of the same law. She said if the Village approves the variance tonight, votes on it, lets it happen, then Walgreens is a big corporation and there is nothing that the Village can do to stop them from selling liquor out of their store. She said she does not want children in danger. She said the Village is built upon families, not liquor being sold. She said once in a great while she likes to drink a glass of wine, but she drinks it at home. She said by approving this variance, it sends a bad message clear across the board.

Matt Meyers said he grew up in the North Valley and certainly respects where the residents are coming from, but feels that this type of use is different and can be distinguished from packaged liquor, hard liquor, miniatures and so on, like Walgreens would sell. This brewpub would only be selling beer that is brewed there at the brewpub. The brewpub would also be selling food. He said the state law does put the 300-foot separation requirement in place but then it goes on to say that the local option district has the ability to waive that requirement in certain situations and he said he believes this is one of those situations because of the fact they are looking at 283-feet as opposed to 300-feet. He said that with the distance and the voluntary hour restrictions they are putting in place, the requirement should be waived and does not open the door for other cases

because each case is unique. He said that state law does say property line to property line, but there are New Mexico case laws that say the distance is measured then from property line of the school and the area in the building where the liquor is actually sold, referencing the Attorney Generals opinion 1974, No. 7418. He said that with these special circumstances, a waiver is appropriate and requests that it be issued.

Trustee Lopez said that the application states the distance from the nearest school is approximately 273-feet. He asked where the 283-feet came from?

Jim Shull said that measurement came from the state. He said the person that the state sent out had a different measurement wheel then he did, and they came up with those two different numbers. He said the state's measurement is the official measurement though.

Trustee Lopez asked Attorney Chappell if state law says property line to property line?

Attorney Chappell said yes, that is what the statute says. He said there have been some litigation and some interpretation of it because there may be places, like shopping centers that are very large, and the actual distances are difficult to determine, which is why there are some Attorney General opinions involved, but the general practice is from the place of service of alcohol to the property line of the school or church, but said he is not sure if that has been settled in any particular litigation in any way yet.

Trustee McDonough asked what was the situation with OM Indian Dining Restaurant?

Planner Seebach said the property OM Indian Dining Restaurant is located on is virtually across the street from the driveway of the property line of the school. She said the actual point of service that the building is on the far end of the property and there is property, which is not school property, between OM Indian Dining Restaurant and the actual school buildings, just as there is in this case.

Mayor Abraham asked if it was less than 300-feet?

Planner Seebach said the measurement of less than 300-feet was from property line to property line.

Matt Meyers said he had the decision that was made with the OM Indian Dining Restaurant and said it was 116-feet and 132-feet to where the liquor was actually sold.

Jennie Vallejos, resident of 428 Sandia View Road NW, said her kitchen window faces Fourth Street and she notices all the kids that walk home from Taft Middle School and they do not always walk straight home. She said their loiter at Taco Bell and Walgreens. She said that the Village would be sending a bad message to children by allowing this waiver. She said she is concerned that adults will buy liquor at the brewpub then offer it to children.

Loretta Smith said she is very concerned about the variance of the brewpub and that they may have a patio on-site. She said music, loud noise, extra traffic, and loud talking customers are of concern. She said Walgreens on Fourth and Griegos is over 300-feet away from a school but by 5-feet and said they were not granted a variance to sell liquor

out of that location. She said it was another example of a good message sent to the community that alcohol sales will not be permitted around schools or children.

Robert Maw, Village Municipal Judge, asked if Walgreens cannot use this as precedence, could OM Indian Dining be used as precedence if each case is unique?

Planner Seebach said the Village has established a procedure and precedence of how the waivers are granted. She said OM Indian Dining Restaurant is across the street with property intervening, and no direct access from the school to the restaurant. She said the same conditions apply here. There is no direct access to the brewpub from the school; there is separate property, as well as a separating street. Walgreens could not get the waiver because they are back-to-back with the school, but the brewpub is not.

Randy Gallegos said that he would like the Board to think about the children. He said he does not agree with the location of the brewpub because it is a very dangerous intersection already.

Trustee Lopez said he has lived in the Village most of his life, has been an engineer for 44-years, and has been a teacher for 1-year. He said his view of this has changed dramatically in this 1-year. He said he cannot allow this to occur and he is going for a denial.

Trustee Rael said he lives very close to this area and frequents the shopping center. He said that to say that children do not have access to this area is not correct, even with school ending around 3:00 p.m., there are kids hanging around there a lot later than that and it is dangerous for them. He said he could not support this.

Trustee McDonough said it is a tough discussion. He said there is one commercial corridor, which is Fourth Street that includes Taft Middle School, Los Ranchos Elementary School, and the North Valley Academy with a lot of restrictions for these types of developments. He said he does not see the comparison with Walgreens because the brewpub does not sell packaged liquor, and neither does OM Indian Dining Restaurant. He said OM was a functioning restaurant that came in for a wine and liquor license to support their food business. He said he asked if the brewpub was going to have food because he thinks it is an important pairing with liquor. He said this decision was particularly difficult, for the same reasons the two other Trustees have already talked about. He said there is a lot of middle school kids that hangout in that area. He said that while it is not a packaged liquor store and the breweries are much lower traffic than that, he could not support the brewpub at that particular location. He said if they were not in the main traffic flow, it would be easier to support it.

MOTION: **Trustee Rael** moved to deny the request for a small brewer's liquor license and a waiver as the premise is within the 283.71 feet of a school in the V-C Zone of the Fourth Street Commercial Character Area, Application #856968 New Mexico Alcohol and Gaming Division. With the following findings: The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. The governing body may disapprove if the proposed location is within 300-feet of a church or school.

Trustee Lopez seconded the motion.

VOTE: The motion was unanimously denied, 3-0.

C. REQUEST BY RALPH ABEYTA, BENNY ABEYTA, DAVID J. MONTOYA AND MICHAEL VELASQUEZ FOR AMENDED FINAL PLAT APPROVAL FOR A MAJOR, SIX LOT SUBDIVISION OF LANDS OF MONICO ABEYTA IN THE R-2 ZONE OF THE CAMINO REAL CHARACTER AREA AND C-1 ZONE OF THE FOURTH STREET COMMERCIAL CHARACTER AREA. THE PROPERTY IS LOCATED ON THE SOUTH SIDE OF CALLE DEL PAJARITO AND IS LEGALLY KNOWN AS TRACT 163, M.R.G.C.D. MAP NO. 24, BEING THAT CERTAIN PARCEL OF LAND SITUATED IN THE ELENA GALLEGOS GRANT WITHIN SECTION 16 (AS PROJECTED), T11N, R3E, NMPM, VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AND BEING IDENTIFIED AS A PORTION OF TRACT 136, M.R.G.C.D. MAP NO. 24, AS SAID TRACT IS BEING DESCRIBED IN THE RECORDS OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON JULY 5, 1967 IN BK. D829, PG. 897. THE PROPERTY CONTAINS 4.7850 ACRES MORE OR LESS. *THIS ITEM HAS BEEN DEFERRED TO THE SEPTEMBER 11, 2013, MEETING.*

7. OLD BUSINESS

There was no old business.

8. NEW BUSINESS

A. DISCUSSION AND APPROVAL OF VOTING DELEGATE AND ALTERNATE FOR THE 2013 ANNUAL CONFERENCE IN TAOS, NM

Trustee Lopez said he would not be able to attend the 2013 Annual Conference due to work obligations.

Trustee Rael said he would be attending the 2013 Annual Conference.

Trustee McDonough said he would be attending the 2013 Annual Conference.

Mayor Abraham said he showed that Trustee Homan will be the delegate and the alternate will be Trustee Rael.

MOTION: **Trustee Lopez** moved approval of Trustee Homan as the Voting Delegate and Trustee Rael as the Alternate for the Annual Conference in Taos, NM. **Trustee McDonough** seconded the motion.

VOTE: The motion carried unanimously, 3-0.

9. TRUSTEES INFORMAL DISCUSSION

Members of the Board discussed various informal topics. No action was taken.

10. ADJOURNMENT

The meeting was adjourned at 8:46 p.m.

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

ATTEST:

Kelly Ward, Administrator