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**MINUTES**  
**VILLAGE OF LOS RANCHOS**  
**Planning and Zoning Commission**  
**6718 Rio Grande Blvd. NW**  
**Warren J. Gray Hall**  
**September 9, 2014**  
**7:00 P.M.**

**Present:**

**STAFF**

**Attorney:** Bill Chappell

**Planning Staff:** Tim McDonough, Director

1. **CALL TO ORDER – Chairman** called the meeting to order at 7:00p.m.

**A. ROLL CALL** - Commissioner Craig, Commissioner Seligman, Commissioner Brawley, Commissioner Hannah, Commissioner Gollis, Commissioner Albert, and Commissioner Tourville was excused.

**Chairman Hannah** stated there was a quorum present for the meeting.

**B. APPROVAL OF THE AGENDA**

**Chairman Hannah** asked Planner McDonough if there were any changes to the agenda.

**Planner McDonough** stated there were no changes to the agenda, but that Item 3.C has been deferred.

**MOTION: Commissioner Gollis** moved approval of the agenda.

**SECOND: Commissioner Seligman** seconded the motion.

**VOTE:** The motion carried unanimously (6-0).

2. **PUBLIC COMMENT PERIOD--None**

3. **CONSENT AGENDA**

**A. APPROVAL OF CONSENT AGENDA**

**Chairman Hannah** asked if there were any changes to the March 11, 2014 minutes.

**MOTION: Commissioner Seligman** moved approval of the consent agenda.

**SECOND: Commissioner Craig** seconded the motion.

1  
2 **VOTE:** The motion carried unanimously (6-0).  
3

4 **4. PUBLIC HEARINGS AND APPLICATIONS**  
5

6 **Attorney Chappell** swore in those present who would be speaking before  
7 the Commission.  
8

- 9  
10 **A. V-14-02 A request by Cindy Martinez for a Variance from §9.2.7(E)(1)**  
11 **minimum lot area shall be one acre to allow for a .800-acre lot in the A-1**  
12 **Zone of the Guadalupe Trail Character Area. The property is located at**  
13 **7905 Guadalupe Trail NW and is legally known as Lots 1 & 2 of Tract 9B,**  
14 **MRGCD Map 27, a certain tract of land situate in Los Ranchos de**  
15 **Albuquerque, Section 20, T11N, R3E, NMPM on M.R.G.C.D. Map #27. The**  
16 **property contains .800 acres more or less.**  
17

18 **Chairman Hannah** asked the Planning Director for the planning report.

19  
20 **Planner McDonough** gave the planning report with recommendation of  
21 approval with findings.  
22

23 **Chairman Hannah** asked if there were any questions from the  
24 Commissioners on the planning report and recognized Commissioner  
25 Seligman.  
26

27 **Commissioner Seligman** asked if the plat showing the comparable lots are  
28 platted lots or are they M.R.G.C.D. (Middle Rio Grande Conservancy District)  
29 lots.  
30

31 **Planner McDonough** stated these are a variety most of the smaller ones are  
32 M.R.G.C.D. lots. The one in the upper left hand corner the .26-acre lot is a  
33 combination of an M.R.G.C.D. lot and a platted lot. That came through for a  
34 variance in 2011 and was approved. Some are suspicious only because they  
35 are so uniform especially around Ranchitos Road. Sorry, he can't really  
36 answer that question.  
37

38 **Commissioner Seligman** stated she had a couple of more questions. In  
39 looking at the aerial of the property is there a dwelling on lot one?  
40

41 **Planner McDonough** stated there is a dwelling on lot number one. The  
42 problem is as we interpreted at the beginning, she came in for a building  
43 permit and we could not issue a building permit on that lot.  
44

45 **Commissioner Seligman** asked for clarification is it a building permit to build  
46 a new, another dwelling or was it to expand this particular dwelling unit.  
47

48 **Commissioner McDonough** stated he believes the intention was to build a  
49 second unit on that lot because the existing unit meets the requirements for a  
50 conditional use as a guesthouse.  
51

1 **Commissioner Seligman** stated the dwelling unit now would be a  
2 guesthouse are they going to split the lot line into an .8-acre lot with a new  
3 dwelling and a guesthouse.  
4

5 **Commissioner McDonough** affirmed the statement.  
6

7 **Chairman Hannah** asked if there were any other Commissioners having  
8 questions for the Planner. Then summarized **the history**, as he understood it.  
9 The land was annexed into the Village in 1964 with no Village specified lot  
10 size. **The** property was divided into three lots in June of 1974.— **at** a point  
11 when there was not an ordinance specifying how to do subdivisions. ~~and~~ **That**  
12 ~~the~~ subdivision ordinance came in some months after that identifying more  
13 restrictive rules for subdividing. **And** later Ordinance 25 imposed specific  
14 minimum lot size of 1 acre. **Again that was** after all the **property's** subdivision  
15 action. He asked **the Planner** if that was a correct summary.  
16

17 **Planner McDonough** stated Ordinance 25 actually came in before.  
18

19 **Chairman Hannah** stated it was done September of 1974.  
20

21 **Planner McDonough** apologized and stated Commissioner Hannah was  
22 correct.  
23

24 **Chairman Hannah** asked if there were any other questions and then called  
25 for the applicant to come forward and state her name and address for the  
26 record.  
27

28 **Cindy Martinez** 7905 Guadalupe Trail NW.  
29

30 **Chairman Hannah** stated this was her opportunity to make sure any  
31 comments she wants the Commission to be aware of concerning her  
32 application.  
33

34 **Cindy Martinez** stated everything is exactly as Tim researched.  
35

36 **Chairman Hannah** asked at this time is there any specific questions by the  
37 Commissioners to that applicant. Seeing none he asked if there was anyone  
38 at this time in the audience, who wished to speak in favor of the application.  
39 He then asked if there was anyone in the audience who wished to speak  
40 against the application. He then directed Ms. Martinez to sit down for the  
41 moment and closed the public comment, and asked for a motion. He then  
42 recognized Commissioner Gollis.  
43

44 **MOTION: Commissioner Gollis** moved to approve the request for a  
45 Variance from §9.2.7(E)(1) minimum one-acre lot to allow for a .8-acre lot in  
46 the A-1 Zone of the Guadalupe Trail Character Area.  
47

48 Findings:  
49

50 (a) The variance is in conformance with the goals and policies of the Village  
51 Master Plan;

1  
2 (1) It is not contrary to the public interest; converting an illegally  
3 subdivided M.R.G.C.D. Tract to a legal lot within the Village brings the  
4 parcel into compliance with Village requirements and Village Ordinances  
5 for a legal subdivision and serves the public interest.  
6

7 (2) Owing to special conditions, a literal enforcement of this Ordinance  
8 will result in unnecessary hardship.  
9

10 (b)

11  
12 (4) Circumstances have created a condition under which no reasonable  
13 use can be made of the land without the requested variance, provided  
14 however, that the fact that the affected parcel might have a greater value  
15 with the variance is not sufficient or justification in itself to authorize a  
16 variance.  
17

18 A variance is required to allow the land to be buildable. The applicant did  
19 not participate in the illegal subdivision, and was unaware of the status  
20 until notified by the Village. The Tract was subdivided in ~~1975~~ June of  
21 1974 and with the changes in ownership meeting the 1 acre minimum is  
22 not possible.  
23

24 (6) The alleged hardship is such that relief is justifiable in accordance with  
25 the goals and policies of the Master Plan.  
26

27 2020 Master Plan Section 2 Village Form 2.1.1 Objectives,  
28 Neighborhoods: *Maintain development consistent with the unique*  
29 *qualities of each area throughout the Village.*  
30

31 2.1.2 Policies and Actions Steps Policy A. *Maintain the corridors*  
32 *and character areas of the Village as distinct sectors or*  
33 *neighborhoods, identified by the unique characteristics of each.*  
34

35 Policy B. *In each of the character areas, preserve the unique*  
36 *characteristics by recognizing and continuing the traditional land*  
37 *development patterns in the character areas, specifically with*  
38 *respect to: Prevalent land utilization*  
39 *Lot patterns*  
40

41 **Chairman Hannah** asked if there was a second to the motion.  
42

43 **SECOND: Commissioner Craig** seconded the motion.  
44

45 **Chairman Hannah** noted Commissioner Craig seconded the motion and  
46 opened the discussion on the motion recognizing Commissioner Seligman.  
47

48 **Commissioner Seligman** stated her concern was that there is already a  
49 dwelling unit on that particular piece of property. It has been determined as a  
50 guesthouse is it there already or is it going to be a guesthouse, and is there  
51 already a variance? She just wants to be clear on that.

1  
2 **Planner McDonough** stated when requesting a building permit the applicant  
3 explained what she wanted to do. They went out and measured the building  
4 and calculated it was under one (1000) thousand square feet. So they went  
5 forward with a conditional use public noticed and through the whole process  
6 of a conditional use for a guesthouse. That determination stopped when they  
7 found the issues related to the lot. So he has not written the determination to  
8 allow that guesthouse, but he intended if this variance passes that he would  
9 go ahead and approve that conditional use administratively.

10  
11 **Commissioner Seligman** stated she is not in favor of granting the variance  
12 with the condition that the present dwelling be noted as a guest house and  
13 not be allowed two separate dwelling units on this .8-acre and she requests  
14 Commissioner Gollis that amendment.

15  
16 **Chairman Hannah** asked Commissioner Gollis if he would accept that as a  
17 friendly amendment.

18  
19 **Commissioner Gollis** stated he had a question for either the Planner or Mr.  
20 Chappelle before he answers Commissioner Seligman's request. Can he ask  
21 the question?

22  
23 **Chairman Hannah** affirmed he could.

24  
25 **Commissioner Gollis** asked would it be appropriate given the nature of the  
26 variance they are granting here, which is zoning the property, to essentially  
27 add to the motion the requirement Commissioner Seligman has requested.

28  
29 **Attorney Chappell** stated it seems to him that it is appropriate in some part  
30 of the process to assure that there are not two single family residences  
31 placed on a single .8-acre lot, and either in the process there needs to be  
32 some requirement that this is not a separate dwelling unit, a rental unit or that  
33 kind of thing. That's the condition on any guesthouse so he thinks that as  
34 long as it's clearly designated a guesthouse however, if you want to do that it  
35 will be fine. He would note that, but for the guesthouse request the fact that  
36 they filed a survey on this M.R.G.C.D. lot this would have come within the  
37 ordinance of a M.R.G.C.D. tracts, which would allow for this building permit to  
38 be issued and approved without a variance and it's only because they chose  
39 to do the survey that they are not in the M.R.G.C.D. Section §9.2.20.

40  
41 **Commissioner Gollis** thanked Mr. Chappell and asked a follow-up question  
42 because Mr. Chappelle had articulated his question better than he did. Is this  
43 the appropriate point in the process for them to deal with the issue of the  
44 guesthouse and the potential construction of the second building on the lot?

45  
46 **Attorney Chappell** stated he believed it certainly was acceptable to deal with  
47 it at this point yes, because that should be a condition of the development  
48 and he doesn't know if it will come back to this group.

49  
50 **Commissioner Gollis** thanked Mr. Chappell.

1 **Planner McDonough** stated if he could answer that it is standard language  
2 when they approve a guesthouse that the conditions are they can't be rented  
3 out. It can't have its own address. It can't have an attached garage. All the  
4 standard conditions that go with the guesthouse in the code definitions those  
5 are always included in the guesthouse conditional approval.  
6

7 **Chairman Hannah** stated that perhaps he can offer Commissioner Gollis and  
8 Commissioner Seligman alternative language as a friendly amendment.  
9 Saying this variance is granted with the understanding that the .8-acre lot is  
10 for a single-family dwelling lot, which is the standard. Because he doesn't  
11 think they have completed the conditional use they are premature to talk  
12 about the guesthouse. At the moment it is just "the house".  
13

14 **Commissioner Gollis** stated lets make this easy for purposes of discussion  
15 of the Commission he is not inclined to accept the friendly amendment to his  
16 motion.  
17

18 **Commissioner Seligman** stated she is not going to vote for this unless there  
19 is a condition. Because they already have a single family dwelling on that  
20 property. If they are going to have a building permit request then she doesn't  
21 know how they can grant the building permit request if there is already a  
22 single family dwelling on the property. The whole goal is to bring the lot into  
23 conformance with the code, which is not in conformance because of the size,  
24 and it already has a dwelling unit on there. That is her concern so she would  
25 like to see this pass, but she thinks that this commission needs to condition it  
26 upon the fact that there will only be a single family residence on there. If the  
27 dwelling unit that is currently there, if it is not made into a guesthouse then  
28 that is going to have to be the dwelling unit. She doesn't know how to phrase  
29 that. That is the problem she has with what is going on. Also she thinks it  
30 unwise for our planning department approve unless the guesthouse unless  
31 they specifically give direction on that point.  
32

33 **Chairman Hannah** stated that perhaps Commissioner Seligman would like to  
34 propose some wording for a specific amendment to the motion that can be  
35 voted on by the Commission.  
36

37 **Commissioner Seligman** asked if the attorney could help with this she  
38 thinks he knows what I am driving at and he's better than me.  
39

40 **Attorney Chappell** stated maybe there is a better approach. Under the  
41 zoning ordinance you are allowed one single family building structure for  
42 each lot of record. With this variance this will become a lot of record, so  
43 consequently under the ordinance a building permit would not be permitted  
44 unless the current building is dealt with in some way. Otherwise, it is a single  
45 family residence. He thinks in terms of issuing a building permit certainly the  
46 planning department can say they can't issue a building permit because this  
47 is for more than one single family dwelling on each lot of record. So that's  
48 part of the rest of the zoning code. He thinks this variance they'll notice it will  
49 come back here and is only relating to the size of a platted parcel and has  
50 nothing to do with the allowed usage of the parcel. He thinks that is where Mr.  
51 Gollis is coming from so he believes that it would be inappropriate under the

1 zoning ordinance. He hopes Planner McDonough would do it. To allow a  
2 building permit, which would in fact be in violation of the zoning ordinance.  
3 And he thinks that's what he's be saying it's gone through before he would  
4 consider a new building permit they had to go through the process to convert  
5 this to a guest house so he really thinks that the circle is closed on it.  
6

7 **Chairman Hannah** asked if Commissioner Seligman wanted to comment.  
8

9 **Commissioner Seligman** stated she respectively doesn't agree with that.  
10 She thinks it needs to be dealt with now. It concerns her that they have a  
11 single family dwelling someone comes in for a building permit for another  
12 single family dwelling. She thinks that needs to restrict this variance to that to  
13 make sure that the current existing dwelling is then considered to be a guest  
14 house. So they don't have two dwelling units on that property.  
15

16 **Attorney Chappell** stated he is not disagreeing that's saying the same  
17 building permit is already seen as a single-family residence abandoned. It  
18 would not be in compliance with zoning and there has been no variance  
19 request for two single family units on a build permit by law.  
20

21 **Chairman Hannah** recognized Commissioner Brawley  
22

23 **Commissioner Brawley** stated if he hears this correctly Planner McDonough  
24 has not issued any kind of determination.  
25

26 **Planner McDonough** stated he had not issued a finding on the request and  
27 they have gone through the entire process for identifying it as a guesthouse.  
28

29 **Commissioner Brawley** asked if the variance is granted **would** the house  
30 now on the property ~~would~~ become the primary house ~~period.~~ **Would it** be  
31 the primary residence? Then the request ~~will~~ **could** be made for the  
32 guesthouse,  
33

34 **Planner McDonough** stated that is correct.  
35

36 **Commissioner Brawley** said ~~then~~ **that that would be determined when** the  
37 building permit **was** entertained. So there is a sequence for these things and  
38 one can't happen before **the other**.  
39

40 **Chairman Hannah** recognized Commissioner Albert.  
41

42 **Commissioner Albert** asked if the house that is existing on the property  
43 were more than one (1000) thousand square feet it could never be a guest  
44 house is that correct at the minimum size for a guest house.  
45

46 **Planner McDonough** stated that is correct that is the maximum size.  
47

48 **Commissioner Albert** asked what is the square footage of the house now? It  
49 really doesn't matter it's close to a one (1000) thousand square feet.  
50

51 **Planner McDonough** stated it is nine (900) hundred and something.

1  
2 **Commissioner Albert** stated she agrees with Attorney Chappell's  
3 explanation and she is confident that the staff will make sure that this  
4 becomes the guesthouse and it's kind of strange to her that they can have a  
5 house that is a guesthouse before they have another house.  
6

7 **Planner McDonough** stated it's unusual, but it's not the first and there are  
8 other houses that are very small and in lieu of doing additions like he did.  
9 They come in and request to make it a guesthouse and then they'll build a  
10 single-family residence.  
11

12 **Commissioner Albert** stated the process has been done perhaps and she  
13 agrees with this process and had one other comment. She is confused on the  
14 motion on page 2-3 that Commissioner Gollis mentioned in (a)1. Converting  
15 an illegal subdivided tract and then calling it a legal subdivision is she missing  
16 something should that language in the motion be changed or does it matter.  
17

18 **Planner McDonough** stated he didn't think it mattered it is incorrect to call it  
19 an illegal subdivision, but the point is just the same it was cut down to a size  
20 that doesn't meet our zoning.  
21

22 **Commissioner Albert** thanked Planner McDonough.  
23

24 **Chairman Hannah** asked if any of the other Commissioners had any  
25 comments, and recognized Commissioner Craig.  
26

27 **Commissioner Craig** stated since he's the last one he might as well throw in  
28 his two cents. They are being asked for a variance from the minimum one-  
29 acre lot for a .80-acre lot in the A-1 Zone, which is our standard residential  
30 one single family dwelling per lot. This would be one-acre. The only thing we  
31 are responding tonight is allowing a variance from one-acre to .80 acres.  
32

33 **Chairman Hannah** stated that is correct then asked if there were any other  
34 questions or clarifications from the Commission. Seeing none he called for a  
35 roll call vote and asked that they say yes if they were in favor or no if they  
36 were not.  
37

38 **ROLL CALL VOTE: Commissioner Craig, yes. Commissioner Seligman,**  
39 **no. Commissioner Brawley, yes. Commissioner Gollis, yes.**  
40 **Commissioner Albert, yes. And Commissioner Hannah, yes.**  
41

42 **VOTE:** The motion carried by a vote of (5-1) with Commissioner Seligman  
43 voting against.  
44

- 45  
46 **B. B&B Permit #0489 A request by Nancy Klion for a Bed and Breakfast**  
47 **Permit as required by §9.2.25(E)(1) in the A-1 Zone of the North Rio**  
48 **Grande Character Area. The property is located at 5637 Rio Grande**  
49 **Bldv. NW and is legally known as Lot 1 Plat of Lots 1-3 Lands of Tomas**  
50 **Herrera Jr. as the same is shown on the plat thereof recorded in the**

1 **records of the Bernalillo County Clerk, New Mexico on January 18, 1978**  
2 **the property contains .4840 acres more or less.**

3 **Chairman Hannah** asked Planner McDonough for the planning report.  
4

5 **Planner McDonough** gave the planning report and stated he could not give  
6 a recommendation of approval or denial of the application.  
7

8 **Chairman Hannah** thanked Planner McDonough and asked the  
9 Commissioners if there were any questions of the Planner and recognized  
10 Commissioner Gollis.

11 **Commissioner Gollis** asked to be clear that he understood the only concern  
12 the Planner had in respect to this application is meeting the requirements of  
13 the zoning ordinance. In the issue of the owner of the property living in the  
14 residence. Is that right.  
15

16 **Planner McDonough** affirmed that was correct.  
17

18 **Chairman Hannah** asked were there any other questions from the  
19 Commissioners and recognized Commissioner Craig.  
20

21 **Commissioner Craig** stated that as far as the Village of Los Ranchos bed  
22 and breakfast application that he has in his folder it requires a State of New  
23 Mexico license. The State license states a Bed and Breakfast is issued to the  
24 owner or managers. The Village says it's the owner. What would be the over  
25 ruling agency?  
26

27 **Attorney Chappell** stated in situations where we have a state statute and a  
28 Village ordinance, unless there is some prohibition; the most restrictive of the  
29 two are applied. In other words, the municipality is free to enact a more  
30 stringent or more restrictive regulation than the overall state ordinance. So in  
31 this case they don't have a state statute superseding the ordinance, as the  
32 Village is more restrictive. ~~(inaudible)~~ So the State could issue a permit so to  
33 speak under their statute that doesn't mean the Village needs to approve the  
34 zoning if it doesn't meet their zoning requirement.  
35

36 **Commissioner Craig** stated so basically they are being asked to determine  
37 if a Limited Liability Company meets the ownership requirements for the  
38 Village permit.  
39

40 **Attorney Chappell** stated that the ordinance says that it be occupied by the  
41 owner. So the question is whether or not a Limited Liability Company qualifies  
42 as an owner that can have a residence there that is managed by the resident  
43 owner.  
44

45 **Chairman Hannah** asked Attorney Chappell to please continue.  
46

47 **Attorney Chappell** stated that the interpretation of the ordinances clearly for  
48 the Village is a legislative kind of function. He used the example when Mr.  
49 McDonough asked his question and says under the statute the Limited  
50 Liability Company is deemed as a separate legal entity. It is a person, which  
51

1 is separate and apart from it's members. The members of a Limited Liability  
2 Company are not responsible for the debts and obligations of the Limited  
3 Liability Company. So if I personally wanted to go into a bed and breakfast  
4 business I could form four Limited Liability Companies and get four bed and  
5 breakfasts and issue the manager 1% ownership in the Limited Liability  
6 Company and have a member lives there and manages it and I could own  
7 99% of four establishments and meet the bed and breakfast code. He thinks  
8 that is the problem with a Limited Liability Company or other ~~(inaudible)~~  
9 **entity**, is that the Village has to make the determination whether or not  
10 someone in that position would in fact be the owner. He is not saying they are  
11 or they are not, but that is hypothetical.

12  
13 **Chairman Hannah** asked are there any more questions for the Planner and  
14 the Attorney and recognized Commissioner Albert.

15  
16 **Commissioner Albert** asked if it was a standard across the U.S. that bed  
17 and breakfasts are managed by owners in residence. She had never heard of  
18 such a thing.

19  
20 **Planner McDonough** stated he could hazard a guess, but honestly he didn't  
21 know.

22  
23 **Commissioner Albert** stated she just asked if he had looked into that. She  
24 has stayed in bed and breakfasts across the country and she never thought  
25 to ask if they were the owners or an owner/manager. It didn't make a  
26 difference to her.

27  
28 **Attorney Chappell** stated he did not have any thoughts. He thinks the issue  
29 only because the bed and breakfast is allowed in any zone in the Village and  
30 under the same context as an in home business. So therefore, if they had a  
31 home occupation permit it's due to the ownership/residency that they can  
32 conduct that occupation. If there was a separate kind of zoning approval.  
33 Whatever bed and breakfast it could be. They could say the Village chose it  
34 to be commercial or otherwise this was still in the zoning of home occupation.  
35 That is the reason it's tricky it is open to all the zones in the Village.

36  
37 **Commissioner Albert** stated that made sense and it answered her second  
38 question because she was going to ask why the Village mandated that the  
39 owner must live within the bed and breakfast he just answered that because  
40 it's designated as a home occupation.

41  
42 **Attorney Chappell** stated and therefore permissible in any zone.

43 **Chairman Hannah** recognized Commissioner Seligman.

44  
45 **Commissioner Seligman** asked for a clarification is he saying a Limited  
46 Liability Company is legal under our ordinance or is it not. If the Limited  
47 Liability Company is the ownership entity can a member reside on the  
48 premise make it legal in our ordinance.

49  
50 **Attorney Chappell** stated he doubts that question saying the interpreting is  
51 up to the Village every legal position that says a Limited Liability Company is

1 a separate legal entity. Separate and apart from the ownership and therefore,  
2 has different liabilities has all those kinds of things. He gave them a  
3 hypothetical due to complications using artificial entities that could clone  
4 multiple locations that are in a residential zone. The manger owns only 1%.  
5 He is not saying that this Commission can't make a decision and shouldn't  
6 make a decision as to whether or not a Limited Liability Company can qualify  
7 as the owner of this issue. He's just trying to delineate the difference between  
8 can a Limited Liability Company be a resident of the property.  
9

10 **Commissioner Seligman** asked following that if it was a partnership that  
11 would be acceptable a dual partnership?  
12

13 **Attorney Chappell** stated he had not been asked to address that, but a  
14 partnership as opposed to tenants in common with joint venture is in fact a  
15 separate legal entity so they may have the same question with a general  
16 partnership qualifies as a general partnership that may not be the same entity  
17 in a joint venture it is not a general partnership by definition or tenancy.  
18

19 **Commissioner Seligman** thanked Attorney Chappell.  
20

21 **Chairman Hannah** stated he did indicate that the Limited Liability Company,  
22 which they've heard in a lot of in the national press that corporations can be  
23 people and the Limited Liability Company, is treated in certain circumstances  
24 as a person. His question is can a Limited Liability Company have a  
25 residence.  
26

27 **Attorney Chappell** stated it is true that a Limited Liability Company or  
28 artificial entity is treated, as a person for many purposes under the law the  
29 question is can an artificial entity reside somewhere. He thinks the answer is  
30 just an artificial entity cannot do things he must only do things through it's  
31 agents. It would be hard to guess that this is a resident although if they have  
32 a person at the place of business they do have some issues like in federal  
33 court jurisdiction for diversity purposes. The diversity of a Limited Liability  
34 Company is not the location or the Limited Liability Company entity, but is the  
35 resident of the members so for some purposes federal court will go through  
36 the Limited Liability Company and to the members. So it's not a black and  
37 white case it's just hard to see how a Limited Liability Company could be "a  
38 resident" under our ordinance. But, the interpretation of the ordinance is  
39 theirs no his as what he's trying to say.  
40

41 **Chairman Hannah** thanked him for that crystal clear explanation. Then  
42 asked if there were any more questions. Then asked the applicant to come  
43 forward and make any comments they would like to make and reminded them  
44 to please state their names and addresses for the recording.  
45

46 **Katherine Davis** 2632 Mesilla NE, Albuquerque 87112 introduced herself as  
47 the attorney for Nancy Klion.  
48

49 **Nancy Klion** 7401 Rio Grande Blvd. NW  
50

51 **Chairman Hannah** asked if they had any comments they wanted to make.

1  
2 **Katherine Davis** stated it's not as murky as it appears from the earlier  
3 discussion and she would tell them the reason it's not is in their own  
4 ordinance it states " The word "person" includes a firm, association,  
5 organization, partnership, trust, company, or corporation, as well as an  
6 individual. So already under the ordinance a Limited Liability Company fits  
7 under the definition of person and going thru the ordinances she never saw a  
8 separate definition of what constituted an owner. But, if one were to argue an  
9 owner is a person likewise since the ordinance defined a Limited Liability  
10 Company as a person a Limited Liability Company could be an owner. Now  
11 then the next question then becomes can a Limited Liability Company reside  
12 in a bed and breakfast and they can because a Limited Liability Company is  
13 made up of members and in this instance what Ms. Klion intends to do. She  
14 has already formed a Limited Liability Company, which is 5637 Rio Grande  
15 Blvd. NW, LLC that has been filed with the State of New Mexico. She intends  
16 to have a membership and another person to have a membership interest  
17 that will actually live on the property. The reason they can't tell them that  
18 person's name at this moment is because Ms. Klion is in negotiation as to  
19 how this is going to operate and what percentages that will be involved. They  
20 believe this Commission could put as a condition that at some point she  
21 needs to bring in an operating agreement that establishes that the person  
22 actually living on the property is going to have a membership interest. And  
23 then she pointed out to the Commission that this has been a bed and  
24 breakfast for many years and in fact this bed and breakfast has been owned  
25 by a Limited Liability Company it wasn't correct to state it was a partnership  
26 and the current owners are here and can testify to that. They operate as a  
27 Limited Liability Company and two of the members live on the property and  
28 two do not. Finally, she pointed out that Ms. Klion it's not like she is going to  
29 be an absentee person in in this Limited Liability Company. Ms. Klion lives  
30 less than a mile from this property and has every intention of being there on  
31 an almost daily basis. So there is nothing unusual about the way this  
32 transaction is going to be structured. They believe that it fits under the  
33 ordinance that the Limited Liability Company as long as a member is living in  
34 the bed and breakfast complies with the condition. If they have any other  
35 questions on that particular issue they can address it or she can turn it over to  
36 Ms. Klion if they have questions on the operation or the future plans for the  
37 bed and breakfast.

38  
39 **Chairman Hannah** asked if there were any questions by the Commissioners  
40 and recognized Commissioner Albert.

41  
42 **Commissioner Albert** stated she was not aware that the ordinance defined  
43 a person as a Limited Liability Company.

44  
45 **Katherine Davis** stated that when she first went onto the website tonight and  
46 under definitions they cannot pull up definitions on the website right now. It  
47 referred her to Chapter 9 previously when she looked at it they could pull up  
48 the definition and it defined a person. But, she was able to pull up the  
49 Gateway District Zone for mixed use with the Village of Los Ranchos  
50 Ordinance 236 and under Section 3 their definitions under general terms it  
51 states number one and reiterated the quote. If the website was working

1 properly they can click on definitions and look for § 9.2.3 Definitions that  
2 definition would be the same for person.

3  
4 **Commissioner Albert** stated she didn't know and she said she was going to  
5 have some constitutional law discussion tonight on corporations hey why not.  
6 She stated she has passed Sarabande for months seeing it for sale and she  
7 can't tell you how delighted she is that it's going to continue as a bed and  
8 breakfast. That's just a personal thing. But, she really appreciated Ms. Davis'  
9 presentation tonight about this.

10  
11 **Chairman Hannah** asked if there were any questions from the Commission  
12 on this issue. Then stated how do they as a Village see a difference between  
13 a business choosing to purchase a bed and breakfast and hire somebody to  
14 live in it as a manager, who has no real interest in it other than earning their  
15 salary and therefore doesn't really have the kind of commitment that an  
16 owner of the property would. Where is the gray line. Certainly, on the one  
17 side of the far side of the spectrum one person and only one person owns it  
18 and the other is some corporation and they just have a hired manager. Where  
19 does this all fit at which end of the spectrum would they address that.

20  
21 **Nancy Klion** stated the Limited Liability Company fits in the ownership  
22 category and the reason it is not just a manager that's hired it's going to be a  
23 person with a membership interest in the LLC and that's what gives that  
24 person incentive instead of just being paid a salary and she really doesn't  
25 care what happens around here as a member they are entitled to a share of  
26 the profits. They make contributions so they do have a stake in this. They are  
27 an owner of the Limited Liability Company that owns the bed and breakfast  
28 and has a lot of incentive to make it work and work properly.

29  
30 **Chairman Hannah** asked if they would like to address the percentage share  
31 of the membership. A ballpark figure that would represent the person.

32  
33 **Katherine Davis** stated that is under negotiations, but they want to be quite  
34 frank that person will have less than a 5% interest. That is where the  
35 negotiations on what percentage, but it would be less than 5%. And the  
36 reason for that is all of the money that's going into the remodeling and  
37 purchase is coming from Ms. Klion.

38  
39 **Chairman Hannah** recognized Commissioner Brawley.

40  
41 **Commissioner Brawley** stated he would like to shift the argument a little bit.  
42 When you stay in a bed and breakfast on Vancouver Island it's because the  
43 youngest daughter is off to school and you get the ~~now extra~~ back room. ~~now~~.  
44 And when the ordinance was written there were bed and breakfasts ~~of this~~  
45 ~~type in the Village~~. So it's the whole ~~gambit~~, spectrum. ~~but~~ He also wants to  
46 remind everybody that ~~of~~ all the properties in the Village ~~many that~~ have  
47 home occupations ~~or~~ are owned by family trusts, Limited Liability Companies,  
48 etc... We've, ~~as a Village~~, done all sorts of things to protect ourselves  
49 ~~financially~~, so it's not exactly that this is the only ~~sort of~~ one ~~of this sort~~ out  
50 there. The other thing is when they wrote the ordinances and the Master  
51 Plan one of the biggest things about those ~~documents was were~~ to deal with

1 the question of Village scale. We want a business in the Village, but and we  
2 want it at the scale of the Village. Now it is his understanding that this will be  
3 reduced from six (6) to four (4) units.  
4

5 **Katherine Davis** stated that's what the ordinance says.  
6

7 **Commissioner Brawley** said so right away they have agreed to a reduction  
8 in scale. He would argue that the lot itself has a limit on it in terms of what  
9 they can build on it and his concern is the Commission what they really needs  
10 to think about what's the impact and what is the purpose of why do they have  
11 this ordinance in the first place. Would it be ill served by reading that to the  
12 letter. To him it's not a legal issue although that is important. But, the  
13 question reality is what do they want to do as a Village. What kind of  
14 businesses do we want here? What kind of businesses do we want to live  
15 next to and by the way he has seen some owner/operator business that  
16 aren't particularly well kept up. He's not sure it's a universal thing- that just  
17 because you live there, that's it's taken care of. So his concern is that to  
18 protect the Village against large-scale investment. He certainly doesn't see  
19 this as a project an event with that possibility. So they can address the  
20 question of scale as it relates to our Master Plan. What do they intend to do in  
21 the future. How does this fit in the Village from the socio-economic  
22 standpoint?  
23

24 **Katherine Davis** stated the better person to answer this is Ms. Klion, but she  
25 would tell them that her letter says what is involved. There is going to be an  
26 extensive remodeling to improve the condition of the property. That it will only  
27 operate with four bedrooms. That she is going to do extensive landscaping,  
28 which will beautify the property and really benefit the Village and so this really  
29 has always been a nice bed and breakfast. It's been operating for awhile, but  
30 it's about to get nice new makeover and the scale will be fitting right in line  
31 with what a bed and breakfast should be by only having four (4) units offered.  
32

33 **Nancy Klion** stated she passed Sarabande several times a day and she had  
34 always admired the property. She always has had beautiful bones and when  
35 it came up she had been thinking about what she wanted to do next. The  
36 property came up and she looked at it and decided that this is what she  
37 wanted to do. As she said in her letter she loves the Village. She loves the  
38 integrity of the Village. She loves the farmers market. She wanted to make it  
39 a beautiful property for people to come and enjoy Los Ranchos. She hoped to  
40 partner with other businesses in the Village to bring more revenue to the  
41 Village. Matt Rembe is a good friend of hers and wants this property to  
42 become overflow for Los Poblanos, if that comes to pass or partnering with  
43 some other properties so if they have a dinner some where staying at the bed  
44 and breakfast. It's more important for her keeping the integrity of the Village.  
45 She is not looking to expand this at all. Not looking to add onto it. She is just  
46 looking to beautify the existing property. The gardens need work. It needs to  
47 be updated inside and that's really her goal.  
48

49 **Chairman Hannah** asked if there were any other questions for the  
50 applicants. Then recognized Commissioner Craig.  
51

1 **Commissioner Craig** stated on the statement on Limited Liability Companies  
2 and home occupancies assuming they were to vote against this because it is  
3 an Limited Liability Company in a home occupancy does that invalidate other  
4 home occupancy licenses in the Village such as his.

5  
6 **Commissioner Albert** stated and hers as well.

7  
8 **Commissioner Craig** stated they have Limited Liability Company for tax  
9 reasons.

10  
11 **Attorney Chappell** stated this is not a termination of what's personal. Let him  
12 direct their attention to what they must deal with and that's all he is saying.  
13 Section B (1) states bed and breakfast establishments That's really what you  
14 have to deal with the question is a 1% member in a Limited Liability Company  
15 an owner living in the residence? The owner in a Limited Liability Company  
16 has nothing to do with the person they have to make the decision do they  
17 qualify and meet the requirements of that sentence. That is the reason he  
18 says ordinance interpretation. He believes that in this interpretation they are  
19 not necessarily invalidating anything. They are establishing a precedent,  
20 which would allow this applicant to sell this 95% to him and he could live in  
21 the East mountains and don't have to live here. There are no restrictions on  
22 that and they could live in every house in the Village and say okay they are  
23 going to manage them all as bed and breakfasts and they are going to  
24 manage them with 1% managers. He thinks they just need to look at the  
25 overall context within the interpretation of the ordinance. Because the  
26 ordinance does not know to transfer. That's why the ordinance says the  
27 owner of the home must live in the residence not definitions of persons.

28  
29 **Commissioner Craig** stated to answer Commissioner Albert's question the  
30 State of New Mexico defines the bed and breakfast ownership as the owner  
31 or manager. Here's a statewide overall rule, which does not apply to us, but  
32 we are asking for that. Most of what the State requires is food service, health  
33 and sanitary requirements. It also allows twenty-four (24) people. This  
34 seemed like if they deny this it takes a very viable business out of the realm  
35 of staying in the Village. If it can't be sold then we lose a resource that we are  
36 trying to encourage in the 4<sup>th</sup> Street Revitalization in the Master Plan that they  
37 worked on and what they are doing as a community.

38  
39 **Attorney Chappell** stated this is purely a policy decision that is not a legal  
40 decision the 4<sup>th</sup> Street Revitalization is in the commercial zone. The question  
41 is. Is this a commercial operation only? Owned by an absentee owner.  
42 Basically it is absentee and could be placed anywhere in the Village. He  
43 stated it was fine with him he did not have a personal walk in this park.

44  
45 **Commissioner Craig** stated Matt Rembe's recommendation as a bed and  
46 breakfast owner carries a lot of weight with him. Is Los Poblanos, which is  
47 one of his favorite places in the world, a bed and breakfast and how many  
48 bed and breakfasts do they have in the Village.

49  
50 **Attorney Chappell** stated he didn't know the answer of the second one, but  
51 Los Poblanos has nothing to do with this. Los Poblanos is a special use zone

1 that was passed when the special use zones were available that permitted  
2 many uses that are not in any other zone frankly and so they have nothing to  
3 do with this issue. This issue for instance may or may not come up if it was a  
4 commercial zone. So policy wise it's like saying what does this mean when  
5 they can put this anywhere in the Village. That's what you have to decide.  
6

7 **Katherine Davis** asked if she could address some of the comments made by  
8 Mr. Chappelle. This is not a question of an absentee owner this is a Limited  
9 Liability Company that a member will live on the property and the member  
10 has an ownership interest in the Limited Liability Company and in fact, this  
11 Village has allowed that to happen in other instances most notably the current  
12 ownership so there is a precedence to allow a Limited Liability Company to  
13 own a property and operate as a bed and breakfast without any member, not  
14 the only member any member to live on the property and the ordinance does  
15 not set forth to be in there you need to have this percentage in the Limited  
16 Liability Company. It just says the owner of the home living in residence,  
17 which they meet by having a Limited Liability Company with a member who  
18 will be living in residence.  
19

20 **Chairman Hannah** asked Commissioner Albert if she had a question.

21  
22 **Commissioner Albert** stated she wanted to make a motion.

23  
24 **Chairman Hannah** stated that was premature.

25  
26 **Commissioner Albert** stated when the time is right she wanted to make a  
27 motion.  
28

29 **Chairman Hannah** thanked her for the offer and stated they'll get to it. Then  
30 asked if there were any more questions. He wanted to point out what  
31 resonates with him from the comments the attorney has made it's not just you  
32 folks. If everyone that came forward with this and wanted to do this as an  
33 Limited Liability Company and everybody involved were in the Village. That  
34 wouldn't be a problem he's been in enough positions to do the right thing for  
35 somebody one time the next person that comes along uses that precedence  
36 to do something you never wanted to have happen. So it is an issue of yes  
37 this particular circumstance they may well as Commissioners may be happy  
38 with, but the cautionary note that the attorney is giving them that they may be  
39 setting a precedence for the next person to come in who isn't a Villager  
40 except for a 1% ownership and do they want to set this precedent. That  
41 would allow that action to subsequently take place. He thinks that's the  
42 problem that they have as Commissioners. So they have to look beyond just  
43 the one issue that is presented to them. But, they have to think about what  
44 that might set for cases that would come up as precedence from that case.  
45 So he appreciates all the comments and he understands the point they are  
46 making in respect of the case. And then asked if there were anything the  
47 applicant wants to say at this time.  
48

49 **Nancy Klion** stated she just wants to remind everybody that she wants to  
50 continue the tradition of Sarabande. It's been in existence for twenty-five (25)

1 years. She understands the conflicts that they have in terms of setting  
2 precedence. She wants to continue what is there.

3  
4 **Chairman Hannah** stated he thinks he speaks for most of the  
5 Commissioners that they want to have a continuation of the bed and  
6 breakfast too, but they also have to think of our other operations as well. So if  
7 there is nothing else the applicants want to say at this point he will open the  
8 floor to anyone of the public, who has signed in and sworn in and wants to  
9 comment in favor of this application.

10  
11 **Audience member asked to be sworn in, as she was late.**

12  
13 **Chairman Hannah** asked the scribe to let her sign in and asked Attorney  
14 Chappell to swear her in.

15  
16 **Attorney Chappell swore in the audience member.**

17  
18 **Chairman Hannah** asked the audience member to state her full name and  
19 address.

20  
21 **Alice Lloyd** 1020 El Pueblo Road NW, Los Ranchos thanked the  
22 Commission for letting her speak. She spoke in favor of this petition in part  
23 because Sarabande has been there so long. It has been a really beautiful  
24 addition to the Village. She got married in her home twenty-three (23) years  
25 ago and her family stayed at Sarabande. She hated to see them set such  
26 limited interpretations of the law that makes it so that property is not saleable.  
27 It is not able to continue to contribute into the Village the way it has in past  
28 decades. There are so many that have been brought up she would suggest  
29 that perhaps they are setting a precedence for future petitions in the Village is  
30 's not possible to let the record show that part of the reason this would be  
31 approved that 95% owner is a long term resident a well respected member of  
32 our community not just the Village but the larger Albuquerque community  
33 Nancy has been a huge contributor to our Scholl sand our community in so  
34 many ways over the decades. She has raised her children here. And she  
35 urges them to support this petition so that Sarabande can continue to  
36 contribute to the Village. Then thanked the Commission.

37  
38 **Chairman Hannah** asked if there were any comments from the  
39 Commissioners and then asked if there was anyone who wanted to speak in  
40 opposition to the application. Seeing none he close the public comment  
41 period and called for a motion and recognized Commissioner Albert.

42  
43 **MOTION: Commissioner Albert** moved to approve the request for a bed  
44 and breakfast permit for the property located at 5637 Rio Grande Blvd. NW  
45 with the following condition that to comply with the requirement in § 9.2.25  
46 E(1) a member of the 5637 Rio Grande Blvd. NW LLC shall live in the  
47 residence at all costs.

48  
49 **Chairman Hannah** called for a second.

50  
51 **SECOND: Commissioner Gollis** seconded the motion.

1  
2 **Chairman Hannah** stated they had a motion on the floor that the  
3 Commission could discuss. And asked if there were any comments from the  
4 Commission. Then recognized Commissioner Seligman.  
5

6 **Commissioner Seligman** stated she is speaking in favor of the motion and  
7 that one of the issues brought up today about the ownership interest the  
8 Limited Liability Company as an entity is certainly entitled to have its  
9 members reside on the premises. While she is hearing mainly the concerns  
10 of the Village staff and the attorney she thinks there should be a change in  
11 the ordinance and the only concern that the owner have a substantial interest  
12 in the property. They need to change the ordinance to say that. They don't  
13 have that and she is in favor because she thinks it's a great asset to the  
14 Village.  
15

16 **Chairman Hannah** asked Commissioner Seligman what would she consider  
17 substantial interest.  
18

19 **Commissioner Seligman** stated she really doesn't know what she is hearing  
20 is the concerns of the Planner and our attorney. It's a question of how much  
21 interest does somebody has to have that constitutes a member and the whole  
22 concept of having a home business. And then have to meet certain  
23 requirements. She believes that if they are that concerned about the  
24 percentage of membership then they need to define it. That is not our place  
25 and if they are really concerned then they should look at 25 to 50%. She  
26 really doesn't know and is not prepared to discuss it. Because right now the  
27 Limited Liability Company has members and that member regardless of  
28 percentage is to reside on the premises and that can be a legal decision.  
29

30 **Chairman Hannah** recognized Commissioner Brawley.  
31

32 **Commissioner Brawley** gave a quick comment this is a zoning issue that is  
33 in front of them. ~~It's~~ **The planning process was** invented to keep neighbors  
34 from beating up on each other. He has to ask what are the possible impacts  
35 on such **an** occupancy- **?** What exactly is going to happen that would **lead to**  
36 **impacts like that of** ~~be~~ big business? ~~It's~~ **A Bed and Breakfast is** not an easy  
37 business- ~~first~~ you have to socialize. One of the difficulties he thinks with a  
38 Village of their size **is** they are continually worried about **scale**. ~~is that they~~  
39 ~~can't simplify thoughts.~~ They can't do a lot of other things **because of**  
40 **inappropriate scale**. Those are all reasonable things, because they could  
41 easily overrun the Village. If we have the wrong scale for example, somebody  
42 ~~came~~ **could come** in and put a trip-hammer over on 4<sup>th</sup> Street. ~~they~~ **The**  
43 **neighbors** would all be pretty upset about it. ~~We had a case earlier the lot~~  
44 ~~subdivision~~ **Ten** years ago he calculated that 60% of the lots in the Village do  
45 not conform to the zoning ordinance **as to size**. So, **the Commission has** ~~they~~  
46 ~~have~~ to continue with **making** ~~writing~~ judgments about it **how the ordinances**  
47 **apply to non-conforming properties**. It's very difficult to write an ordinance that  
48 spells out the answers to all these things. **That is why there is a Commission.**  
49 **But,** if this is the ordinance they have to fall back on. **It is a same**  
50 **representation, of how** ~~that~~ the Village has stated ~~how~~ it wants to be and **is a**  
51 **reflection** of ~~that is~~ the Master Plan. Again that Master Plan states that scale

1 is the important thing, but they can do a lot of different things as long as they  
2 are ~~on~~ at scale. They can make money they could do all kinds of things and  
3 he would argue that if they run a bad operation they won't be in business very  
4 long. ~~frankly~~. If they look around the Village he's not the only one there are  
5 other people. He looks for places for relatives to stay whenever there is an  
6 overflow in his own home. And there aren't many of them especially around  
7 holiday season. So number one, ~~they need this they have had it.~~ it's a good  
8 asset to the Village... they need it. He thinks reading of that phrase bed and  
9 breakfast establishments must be operated by the owner living in the home  
10 residence is not really the issue. Even if ~~the~~ Limited Liability Company  
11 member isn't living in the home residence, he is ~~it~~, part owner in the facility.  
12 He could read it that way. So he doesn't have a problem with it that way.  
13 What he has a problem with is something with twelve (12) units. ~~or~~  
14 Something like that would create: traffic impacts, and all other kinds of issues  
15 that impact the neighbors, such as noise and so on. That is not the case  
16 here. They have enough of other safe guards either in the normal appliance  
17 of the nuisance laws and ordinances, or in ~~more than~~ the way they grant  
18 home occupations to handle the downside even if it does change ownership.

19  
20 **Chairman Hannah** asked if there were any more comments from the other  
21 Commissioners. He stated he is the last one to speak and he is concerned  
22 about the issue. Commissioner Seligman put her finger on it. What would be  
23 a substantial interest in the property? What constitutes an owner from a  
24 conceptual point of view? Because if they look historically at this they are  
25 talking about the home occupation ordinance. Talking about somebody doing  
26 something out of their home. Wanting to do it as a business for themselves  
27 out of their home. What the Village wants to be. As Commissioner Brawley  
28 mentioned he has been at many public meetings of putting together the  
29 Master Plan and for over twenty (20) years in the Village he thinks people are  
30 concerned that various activities that occur in the residential areas are  
31 something of the nature of the residential area and not a commercial activity  
32 in a true commercial sense, but they have a relationship to somebody  
33 residing there on the other hand as he looks at the ordinance he doesn't find  
34 anything that clarifies the definition of owner for them to be able to say the  
35 owner must be at least 50% or any substantial or 1% is enough. He is still  
36 looking for that clarification of what constitutes from our ordinance point of  
37 view satisfies the ordinance to the letter of the law of what is an owner. Any  
38 whether or not that owner is in residence. It certainly seems we've answered  
39 the question a member of a Limited Liability Company, who has part  
40 ownership of that Limited Liability Company is part owner. He guesses they  
41 have answered that. Is that correct.

42  
43 **Attorney Chappell** stated just getting through the legalese a Limited Liability  
44 Company Act says a membership interest is personal property and the  
45 member owns no interest in the assets of the Limited Liability Company. So  
46 if you want to vote down to a clear legal interpretation that is what the law  
47 says. He has been trying to stay away from it because he is not trying to  
48 lecture on this. He is simply saying from an interpretation point of view it is a  
49 Limited Liability Company that is the owner there is no question that is the  
50 owner of the property. Is it living in residence and that is what our ordinance  
51 says and we have no other guidance that that. A member of a Limited

1 Liability Company is not the owner of the property. And that's why it's not  
2 what they are trying to present here.

3  
4 **Chairman Hannah** thanked Attorney Chappelle and asked if there were any  
5 last questions by any of the Commission before they vote. Seeing none. He  
6 called for a roll call vote stating yes would be in favor a no would be opposed.

7 **ROLL CALL VOTE: Commissioner Craig** yes. **Commissioner Seligman**  
8 **yes. Commissioner Brawley** yes. **Commissioner Gollis** yes.  
9 **Commissioner Albert** yes. **Commissioner Hannah**, no.

10  
11 **VOTE:** The motion carried by a vote of (5-1) with Commissioner Hannah  
12 voting against.

- 13  
14  
15 **C. CU-14-05 A request by Edward Boyssel to operate an educational facility**  
16 **as required by §9.2.12(B)(19) in the C-1 Zone of the Fourth Street**  
17 **Character Area. The property is located at 6920 4<sup>th</sup> Street NW and is**  
18 **legally known as Tract A Lands of C.F. and Lena M. Bishop No. 2, a**  
19 **certain tract of land situate in Los Ranchos de Albuquerque, Section 21,**  
20 **T11N, R3E, NMPM in Bernalillo County as the same is shown and**  
21 **designated on the plat filed in the Office of the County Clerk of**  
22 **Bernalillo County, New Mexico on January 22, 1959 in Volume B3, Folio**  
23 **94. The property contains .400 acres more or less.**

24 **DEFERRED UNTIL OCTOBER MEETING AT THE REQUEST OF THE**  
25 **APPLICANT.**

26  
27 **Chairman Hannah** noted that Item C has been deferred to the next meeting.

- 28  
29 **D. Appeal of Declaratory Ruling of Director of Planning and Zoning**  
30 **regarding the Dark Skies Ordinance matter at 5541 Eakes Rd. NW, Los**  
31 **Ranchos de Albuquerque, NM.**

32  
33 **Chairman Hannah** asked Planner McDonough for the planning report.

34  
35 **Planner McDonough** gave the planning report with recommendations of  
36 denial of the appeal.

37  
38 **Chairman Hannah** asked Attorney Chappell stating that for the benefit of the  
39 Commission they have not had an appeal in awhile and so it might be  
40 appropriate to refresh the Commissioners on what grounds they can use for  
41 judging the appeal whether or not we must focus ourselves strictly on  
42 procedural issues. Whether or not the Planner followed the correct  
43 procedures or can they completely look at the entire issue and make our own  
44 judgment as to the approval or non-approval of the lighting circumstance.  
45 That clarification would help.

46  
47 **Attorney Chappell** stated that an appeal of this nature is handled like a  
48 public hearing as the though this was originally presented to the Commission.  
49 Typically the distinction of the first level you are authorized to accept new  
50 testimony and to accept new evidence according to the rules that they  
51 determined he thinks you can make this Commission make a decision on the

1 basis depending on what they do. The issue by corpus precedent if you think  
2 the appeal should go to the Board of Trustees, which there are some  
3 limitations at this point they are at that first level of determination so they can  
4 make a determination as they determine.  
5

6 **Chairman Hannah** thanked Attorney Chappell for the clarification stating he  
7 gets the point.  
8

9 **Planner McDonough** interrupted Chairman Hannah apologizing for his  
10 rookie-ness in presenting reports. He should probably go to the pictures of  
11 the lighting. Then proceed to give a presentation of the photos taken at the  
12 site.  
13

14 **Chairman Hannah** asked if there were any questions of Planner McDonough  
15 by the Commission. Then recognized Commissioner Seligman.  
16

17 **Commissioner Seligman** stated she had a question about picture #10 and  
18 #11 was this taken from the Coleman property to the Thom property or from  
19 the Thom property to the Coleman property.  
20

21 **Planner McDonough** stated #10 was taken from the Coleman's to the  
22 Thom's #11 is the same.  
23

24 **Commissioner Seligman** stated so this is not what the Thom's see.  
25

26 **Planner McDonough** stated that is correct.  
27

28 **Chairman Hannah** recognized Commissioner Brawley  
29

30 **Commissioner Brawley** asked if there was any lighting prior to the tennis  
31 court.  
32

33 **Planner McDonough** stated there was some lighting in the neighborhood  
34 typical of the neighborhood they have some outside lighting certainly nothing  
35 like this.  
36

37 **Chairman Hannah** recognized Commissioner Albert.  
38

39 **Commissioner Albert** stated unfortunately none of these pictures have an  
40 exposure time on the photos and that makes a huge difference. They can  
41 exaggerate lighting on exposure times.  
42

43 **Planner McDonough** stated he doesn't.  
44

45 **Commissioner Albert** stated he knows what she is talking about.  
46

47 **Planner McDonough** stated he did put it on automatic setting and turned off  
48 the flash so it wouldn't pick up the flash. He had no control over exposure  
49 times. It was the same exposure for all the pictures.  
50

1 **Commissioner Albert** stated he went out there and just focused and took  
2 the pictures. Stating before she was a lawyer she was an engineer and she  
3 was just thinking that there wasn't a lot of scientific data on some of the data  
4 given to them.

5  
6 **Chairman Hannah** recognized Commissioner Brawley.

7  
8 **Commissioner Brawley asked** if it was a digital camera.

9  
10 **Planner McDonough** affirmed a digital camera.

11  
12 **Commissioner Brawley** stated he may have had the information in other  
13 words the time, the exposure all that could be there and it would basically the  
14 same thing as using a light meter you'd have to do some calculations.

15  
16 **Chairman Hannah** asked are there any more questions for the Planner and  
17 recognized Commissioner Craig.

18  
19 **Commissioner Craig** stated basically they are being asked to review the  
20 appeal on the Dark Skies Ordinance.

21  
22 **Planner McDonough** stated that is correct the routine compliance of the  
23 Dark Skies Ordinance.

24  
25 **Commissioner Craig** stated they are appealing his decision that these lights  
26 are compliant with the Dark Skies Ordinance. So they have to follow the Dark  
27 Skies Ordinance.

28  
29 **Chairman Hannah** stated they are trying to determine they agree with the  
30 Planner that these lights do indeed meet the Dark Skies Ordinance then  
31 recognized Commissioner Seligman.

32  
33 **Commissioner Seligman** asked if they had any pictures taken from the  
34 Thom's residence looking at what they actually see.

35  
36 **Planner McDonough** stated he didn't have that specific picture though some  
37 of the pictures give a representation of what they see in particular he is inside  
38 the fencing on picture #6.

39  
40 **Commissioner Seligman** stated he doesn't have any pictures from the  
41 Thom property looking at the Coleman property.

42  
43 **Planner McDonough** stated no he can only offer #7 as the only one that is  
44 not on the court. But, he doesn't have that picture.

45  
46 **Commissioner Seligman** stated do you know where he was standing. There  
47 is zero perspective of what the Thom's see.

48 **Chairman Hannah** stated the Planner has approved these lights as meeting  
49 the Dark Skies Ordinance. ~~The appeal is that they do not, that is what they~~  
50 ~~are looking at as a substitute as he understands it for this particular issue.~~  
51 ~~Asking is that clear.~~ With the Commissioners approval, of the procedure they

1 will follow it is the same as any application they have in front of them: To ask  
2 the applicant to comment then people in favor and those opposed then close  
3 the public comment, then comment among ourselves and make a motion. Is  
4 there any objections to following those procedures. Seeing none. At this time  
5 they asked that the applicant or representative to come forward and make  
6 any statements and reminded them to state their full name and address for  
7 the recording.  
8

9 **Jason Wexler** 1212 Pennsylvania Ave NE Albuquerque, 87110

10  
11 **Chairman Hannah** asked for an introduction.

12  
13 **Jason Wexler** stated he was the attorney representing the Thom's.

14  
15 **Jason Wexler** proceeded to give his presentation on the materials he gave in  
16 the meeting packet. Explaining the seventeen (17) items as he went forward.  
17

18 **Chairman Hannah** asked Mr. Wexler to identify as he goes along if he is  
19 appealing the particular procedure that the Planner went thru versus the  
20 substantive nature of whether or not the lights are or are not in compliance.  
21 Those are two different issues and if he can clarify those.  
22

23 **Marsha Thom** 5545 Eakes Road NW had a question and answer period with  
24 Mr. Wexler asking for timelines.  
25

26 **Chairman Hannah** asked the scribe if this was getting recorded since Mr.  
27 Wexler was not at the microphone. At this time Mr. Wexler was given a hand  
28 held microphone.  
29

30 **Marsha Thom** continued to answer Mr. Wexler's questions on the time line.  
31

32 **Chairman Hannah** recognized that Attorney Chappell was trying to get his  
33 attention. Noting that everything that Mr. Wexler was presenting was written  
34 down in the packet given to the Commissioners. He stated some highlighting  
35 of what is not in the documentation might help. Before going on he wanted to  
36 interrupt because the Attorney was requesting something.  
37

38 **Attorney Chappell** noted that going through the procedural things the  
39 Commission like any other event can limit testimony to relevancy and can set  
40 time limits. Whatever they need to do it appears that with the  
41 acknowledgment the real issue to the lights a lot of this is interesting, but may  
42 not be what the Commissioner's want to sit here tonight and listen to. They  
43 can make some rules in respect to that and including time limits.  
44

45 **Chairman Hannah** stated it would be helpful if he could guess to how much  
46 longer they have on their presentation.  
47

48 **Jason Wexler** stated it could take about another hour.  
49

50 **Chairman Hannah** stated he thinks that is excessive from the point of view  
51 they already have all of the most he is saying in writing, which we have had

1 over a week and we've done our homework on. He wants to give him a full  
2 chance to make any comments, but he is wondering if any of the  
3 Commissioners wanted to make a comment as to some limitation and  
4 recognized Commissioner Albert.

5  
6 **Commissioner Albert** stated the packet that was presented to them and she  
7 fully appreciates the permeable issues, but she would like to have the  
8 conversation on the lighting issue. Her personal interest is the photos and not  
9 any explanation on them. And she is happy to stay here a long time, but her  
10 interest is to have the explanation of the photos in this document.

11  
12 **Chairman Hannah** recognized Commissioner Gollis.

13  
14 **Commissioner Gollis** said to amplify Commissioner Albert the beginning  
15 presentation is excellent. They have all studied it. Mr. Wexler would be doing  
16 himself a favor at least in his opinion if he would drill down into this and  
17 explain at least to him two things. Why does Planner McDonough's approval  
18 violate the Dark Skies Ordinance and it would be helpful to him to understand  
19 the argument about the interplay between the Dark Skies Ordinance and the  
20 fact that this is zoned A-2.

21  
22 **Jason Wexler** stated he had no comments.

23  
24 **Chairman Hannah** recognized Commissioner Seligman.

25  
26 **Commissioner Seligman** stated one of the questions she has is she is  
27 looking at 9.2.20 (4) "assuring that the light generated by outdoor fixtures  
28 does not extend beyond the property line of the property from which it  
29 emanates." One of her concerns is that it's in his package, but it is not in  
30 Planner McDonough packet so there is no perspective apparently. There is  
31 no inspection of the emanation of a light from the Thom's perspective that is  
32 her concern.

33  
34 **Commissioner Gollis** said if Mr. Wexler could make his argument and let us  
35 know what your position is it would speed things up and present the case.

36  
37 **Chairman Hannah** stated the key is to assume we have read ~~were at~~ your  
38 presentation now highlight the points you want to make that are directly  
39 appropriate to the appeal.

40  
41 **Jason Wexler** stated his suggestion is to shift straight to some testimony  
42 from Mr. Delapp, who is the engineer, who provided the report. His expertise  
43 will provide all the information that you are looking for as far as how these  
44 lights fail to comply with the specific requirements of the ordinance. Those  
45 requirements can be satisfied or analyzed from the standpoint of certain  
46 scientific approaches that Mr. DeLapp can expand upon so you can  
47 understand.

48  
49 **Commissioner Albert** asked if that was Section 17.

50  
51 **Jason Wexler** stated that was correct.

1  
2 **Chairman Hannah** stated they have read this now give us some points.  
3

4 **J. Marsden DeLapp** 1190 Harrison Road Suite 3-A, Santa Fe, 87507 stated  
5 the points are in his opinion the lighting doesn't comply with the ordinance.  
6 The shielding is inadequate it does not cut off the light at a 45° degree as  
7 required by the ordinance. The main point of the ordinance is to protect the  
8 night skies and to him it's over the top and inappropriate for a residential area  
9 especially for the Village. It's just the levels of lighting needed for sports  
10 lighting is extremely high and you can't do that kind of thing and be close to  
11 residences without having an enormous impact just the magnitude of sports  
12 lighting is way over the top.  
13

14 **Chairman Hannah** stated as he recalls from the presentation you were  
15 quoting standards of what was minimally needed to light a tennis court were  
16 in your professional opinion stating that minimum was so bright as to be  
17 difficult and impossible to contain within a residence.  
18

19 **J. Marsden DeLapp** stated that was correct. The minimum is fifty to eighty  
20 (50-80) foot-candles. Something like this room. It's that bright and to have  
21 that kind of lighting you have to have it really high where the tennis ball is  
22 played. It needs to be up six (6) to eight (8) feet above the court and with the  
23 fixture that is cut off at 45° degrees and is on the edge of the court. Stating  
24 the fixture can't effectively light the tennis court under the ordinance.  
25

26 **Chairman Hannah** asked if there were questions from the Commissioners  
27 for Mr. DeLapp and then recognized Commissioner Seligman.  
28

29 **Commissioner Seligman** asked if in his professional opinion does the light  
30 generated from those fixtures extend from the property line.  
31

32 **J. Marsden DeLapp** stated it does extensively light up the property line.  
33

34 **Commissioner Seligman** asked did he have any numbers did he do any  
35 research from the Thom's property? Can you see the light extending beyond  
36 the Coleman's property line?  
37

38 **J. Marsden DeLapp** stated he did not look it at night he did look at the  
39 photos that were taken and it's pretty obvious you can look at the photos and  
40 figure with the angles where that photo was taken. He proceeded to explain  
41 how that is done.  
42

43 **Chairman Hannah** recognized Commissioner Gollis.  
44

45 **Commissioner Gollis** stated he had a question for Mr. Delapp on page 1 the  
46 last paragraph you make reference to a flood that appears on page 2 of your  
47 report showing that the fixtures installed do not comply with the requirement  
48 of 45° degrees cut off. What he is curious about when you turn to page 2 and  
49 look at the photo explain to him and to the Commission if that light was  
50 properly angled consistent with the requirements of the ordinance what would

1 we see. What would be different that the light would not be going to the grass  
2 at the back?  
3

4 **J. Marsden DeLapp** stated if that was cut off at the 45° degrees angle you  
5 would not see the brightness from that light fixture. You could see the fixture  
6 itself you could not see the glow from the light fixture.

7 **Commissioner Gollis** asked did he have occasion to examine the light  
8 fixtures.  
9

10 **J. Marsden DeLapp** stated he examined them during the day and he's also  
11 seen all the photos.  
12

13 **Commissioner Gollis** stated could you give them a sense did you form an  
14 opinion of what angle they were tilted or how far out of compliance they were.  
15

16 **J. Marsden DeLapp** stated looking at the shielding it's apparent that they  
17 emit light a little below horizontal.  
18

19 **Commissioner Gollis** thanked him and that's all he had.  
20

21 **Chairman Hannah** recognized Commissioner Albert.  
22

23 **Commissioner Albert** asked Mr. DeLapp if he had reviewed the ordinance.  
24

25 **J. Marsden DeLapp** affirmed he had.  
26

27 **Commissioner Albert** stated she wanted his opinion on statues and his  
28 engineering. There doesn't seem to be any engineering information on the  
29 statues of Los Ranchos. And would like to hear how he came in and did the  
30 review of the property. He doesn't have lumens. In the ordinance it's states  
31 you can't have light spill over your property line. Can he elucidate his  
32 engineering opinion on that?  
33

34 **J. Marsden DeLapp** gave his opinions on the ordinance.  
35

36 **Commissioner Albert** thanked him and stated there might be some people  
37 here who don't have a scientific background. Could he think more a little bit  
38 more on lumens? She is aware that Los Ranchos ordinances have no  
39 information on light intensities and so on. Could he give a little more  
40 information on the intensity of lighting because she thinks it's very important?  
41

42 **Chairman Hannah** agreed with Commissioner Albert it is important as both  
43 she and the expert our ordinances does not include any of that and therefore  
44 whether or not the installation meets our ordinance those points would be  
45 irrelevant.  
46

47 **Commissioner Albert** thanked Commissioner Hannah she is wrong.  
48

49 **Chairman Hannah** recognized Commissioner Seligman.  
50

1 **Commissioner Seligman** stated she thought it was important because we  
2 are talking about spill over. You are talking about minimum and talking about  
3 the testimony of the sports complex and she doesn't know. She knows the  
4 stadium is really bright and something else isn't, but what criteria are used on  
5 the minimum amount to meet the lighting criteria that's part of our ordinance.  
6 So she is curious what you mean by sports lighting as opposed to the other  
7 lighting.

8 **J. Marsden DeLapp** gave an explanation of what sports lighting is.  
9

10 **Commissioner Seligman** stated she's just trying to figure out looking at the  
11 ordinance and quoted a passage from the ordinance. In your opinion is the  
12 lighting on the Coleman's tennis court using the minimum amount of light to  
13 meet the criteria and does the light generated extend beyond the property  
14 line.  
15

16 **J. Marsden DeLapp** stated to meet minimum court lighting because the  
17 lighting as it's installed with the shielding does not light up the middle of the  
18 court they can see that in the photos.  
19

20 **Commissioner Seligman** thanked Mr. DeLapp.  
21

22 **Chairman Hannah** recognized Attorney Chappell.  
23

24 **Attorney Chappell** asked if they could assume the pictures under tab 16 are  
25 pictures taken from the Thom property  
26

27 **Chairman Hannah** stated he believed the pictures are the ones from Planner  
28 McDonough and after a discussion determined that the photos under tab 16  
29 were from pictures taken by the Thom's.  
30

31 **Attorney Chappell** asked if they could assume those were taken from the  
32 Thom's property.  
33

34 **Jason Wexler** stated he could represent to the Commission that those were  
35 taken from the Thom property.  
36

37 **Chairman Hannah** thanked Mr. Wexler and recognized Commissioner  
38 Brawley.  
39

40 **Commissioner Brawley** stated there are a couple of things that are true  
41 about Los Ranchos and one of the reasons we have the ordinances we do is  
42 it's relatively dark. We don't have streetlights and so you can put a candle at  
43 the end of a street and see it. So, his the statement earlier to stop the light by  
44 using cut-offs on the light fixture to prevent the light from crossing cutting  
45 across the property line he thins is accurate. So, then for him it logically begs  
46 the question, at what time does it becomes obtrusive-? He mentioned some  
47 metrics 30 to 50 foot candles. Does he have any measurements from the  
48 neighboring property and how much foot-candles are falling on the property?  
49

50 **J. Marsden DeLapp** stated they did not take any measurements.  
51

1 **Commissioner Brawley** stated our ordinance doesn't state any thing or have  
2 a minimum to compare.

3  
4 **J. Marsden DeLapp** said no lighting.

5  
6 **Commissioner Brawley** confirmed no lighting. So from his professional thing  
7 **opinion**, has he derived some determination whether or not this is obtrusive?  
8 Let him give an example he has worked on many campuses and he's had the  
9 opposite problem. The lighting committee comes and says there are too  
10 many dark spaces on campus and they are afraid for students and you put in  
11 lights in each of those. Two months go by and the next committee comes in  
12 and says there are dark places between the lights. **And**, of course, there **are**  
13 **because** it's all relative. His question is what sort of yardstick would you use  
14 to determine at what point does light become really obtrusive. It has to be  
15 across the fence.

16  
17 **J. Marsden DeLapp** explained how that would be don by IDS standards.

18  
19 **Chairman Hannah** recognized Commissioner Craig.

20  
21 **Commissioner Craig** stated this is not at minimum standards because it's  
22 dark in the middle of the court. So it's lower than what it should be are the  
23 Coleman's spilling light not on the court or onto the adjacent properties.

24  
25 **J. Marsden DeLapp** explained the concepts of uniformity.

26  
27 **Commissioner Craig** stated so they need high aluminum.

28  
29 **J. Marsden DeLapp** stated they would need higher poles.

30  
31 **Commissioner Craig** stated which is?

32  
33 **J. Marsden DeLapp** answered not allowed.

34  
35 **Commissioner Craig** stated looking at the site this has got to be the Thom's  
36 nightmare after 30 years their property faces right on the tennis court. There's  
37 nothing that you can do about this. What would be his suggestion to remedy  
38 this?

39  
40 **J. Marsden DeLapp** affirmed the statement.

41  
42 **Attorney Chappell** gave an explanation of the land use and dark sky  
43 ordinance and what is reasonable restraint against the property and you have  
44 to make the determination from that and what are reasonable standards and  
45 ordinance controls.

46  
47 **Chairman Hannah** noted that the ordinance talks about recreational facilities  
48 and ball field illumination. Those are two examples of lighting and what the  
49 dark skies is dealing with as far as lighting that will exist and have some  
50 controls. So tennis courts are recreational and what he is hearing is that the  
51 lighting is inadequate to play tennis, but if you put in adequate lighting you

1 couldn't meet the ordinance. Is that correct those are the conflicts he is  
2 hearing.

3  
4 **J. Marsden DeLapp** affirmed Commissioner Hannah's statement.

5  
6 **Chairman Hannah** recognized Commissioner Craig.

7  
8 **Commissioner Craig** stated there is nothing in the ordinance that talks about  
9 restrictions.

10 **Chairman Hannah** recognized Commissioner Brawley.

11  
12 **Commissioner Brawley** asked would it be more obtrusive to have  
13 streetlights or tennis court lights.

14  
15 **J. Marsden DeLapp** stated his calculations are that would be equivalent to  
16 forty (40) streetlights in their back yard and it would be less obtrusive to have  
17 streetlights.

18  
19 **Chairman Hannah** asked if there was any one else who wanted to speak in  
20 favor of the appeal. Then asked to swear in audience members who were  
21 late and asked the scribe to sign them in.

22  
23 **Chairman Hannah** stated that Commissioner Brawley pointed out that we  
24 have an ordinance limit on meeting time.

25  
26 **MOTION: Commissioner Gollis** moved that the Commission waive the  
27 limitation on the meeting exceeding 10:00 pm at night to continue fully taking  
28 under advisement this particular application and the other application  
29 remaining on tonight's agenda.

30  
31 **Chairman Hannah** asked for a second.

32  
33 **SECOND: Commissioner Seligman** seconded the motion.

34  
35 **Chairman Hannah** asked the current applicant and the one more item still on  
36 the agenda: Is there any objections to the Commission continuing? Seeing  
37 none asked if there were comments from the Commission. Seeing none  
38 called for a vote.

39  
40 **VOTE:** the vote passed unanimously (6-0).

41  
42 **Chairman Hannah** called up the next audience member to speak in favor of  
43 the appeal asking them to say their complete name and address.

44  
45 **Marilyn Duncan** 5549 Eakes Road NW, 87107 explained they are neighbors  
46 of the Thom's. Then gave testimony about the amount of light. Stating it is a  
47 dark subdivision, but the first time she saw the lights in December 2013 the  
48 whole corner including the bridge into the subdivision lit up. Stating she was  
49 not happy with the way the Village inspected the lights with no measurements  
50 and was extremely un-professional. The good thing is to her knowledge the  
51 lights have not been on this summer.

1  
2 **Paul Duncan** 5549 Eakes Road NW, 87107 affirmed that there were no light  
3 intensity measurements taken and reiterated what his wife said. Along with  
4 the statement he made when he first saw the lights “the middle of the tennis  
5 court is dark Steve (Coleman) is not going to like that.” Ending his statement  
6 with you approved a tennis court that will never be used.  
7

8 **Chairman Hannah** asked if there was anyone else who wanted to speak in  
9 favor of the appeal.

10 **Rick Thom** 5545 Eakes Road NW, 87107 stated he is here to protect his  
11 property rights just to have no light trespass his bedroom.  
12

13 **Chairman Hannah** asked Mr. Wexler was there anything that wasn’t covered  
14 that he wanted to make a comment on.  
15

16 **Jason Wexler** stated he wanted to talk about the other ordinances and how  
17 they are interpreted with reasonable application. Professionals need to be  
18 used to make a determination.  
19

20 **Chairman Hannah** recognized Attorney Chappell.  
21

22 **Attorney Chappell** stated the Village has time for a rebuttal, but it needs to  
23 be completed.  
24

25 **Chairman Hannah** asked if there was anybody here who wanted to speak in  
26 opposition to the appeal. Seeing none. He then recognized Attorney  
27 Chappell.  
28

29 **Attorney Chappell** stated in procedural matters in an appeal the appellant  
30 has the burden of proof to show the decision was incorrect. He heard an  
31 “expert” who would have been thrown out of court. He did not have the  
32 qualifications. He did no on site provisions. He made no measurements. He  
33 came in with an opinion that you can’t have these lights in a residential  
34 neighborhood, which is not the ordinance. So he doesn’t believe they have  
35 met the burden of proof. That in fact these lights do meet the ordinance that  
36 is the decision you have to make. The question is has the burden of proof  
37 been met the lights that are there after the adjustments were made in May of  
38 this year. Was the dark skies ordinance met? Whether they would have liked  
39 for it to be done a different way has nothing to do with it.  
40

41 **Chairman Hannah** recognized Commissioner Seligman.  
42

43 **Commissioner Seligman** stated the Village did not meet its burden they also  
44 did not have expert or scientific measurements. The Village never went on  
45 the Thom property to see whether or not there was any. Her question was  
46 and she asked this before is the testimony from the Thom’s that they are  
47 seeing the light on the property that is the testimony. That is what she is  
48 considering. That carries the same weight as Mr. McDonough’s statement.  
49

50 **Attorney Chappell (at 3 hours 3 minutes into meeting Mr. Chappell**  
51 **statement was inaudible due to overlaying of conversations).**

1  
2 **Commissioner Seligman** stated Attorney Chappell states there was no  
3 testimony the Thom's gave testimony.  
4

5 **Attorney Chappell** asked did they meet the burden of proof that is all that is  
6 needed.  
7

8 **Jason Wexler** objected to the comments by Attorney Chappell about the  
9 burden of proof.

10 **Chairman Hannah** stated that they would give the Planner time to do a  
11 rebuttal and then they would close the public comment.  
12

13 **Planner McDonough** gave his rebuttal.  
14

15 **Chairman Hannah** asked if there were any last questions from the  
16 commissioners for the Planner. Seeing none he closed the comment period  
17 and asked for a motion and recognized Commissioner Gollis.  
18

19 **Commissioner Gollis** stated he was going to take a shot here and it consists  
20 of two parts with the findings in the middle. So please bear with him.  
21

22 **MOTION: Commissioner Gollis** moved that the Commission overturn the  
23 Planning Director's approval of the zone review allowing tennis court lighting  
24 at 5541 Eakes Road NW, based on the following grounds:  
25

- 26 1. Tennis court lighting in residential areas does not appear to be  
27 compatible to preserving the valued character described in the Village  
28 of Los Ranchos 2020 Master Plan Goal 2.1 Village Form Goal, which  
29 states the goal is preserve and enhance the historic and value of  
30 Village neighborhoods.
- 31 2. The tennis courts lights as installed do not appear to meet the  
32 standard identified in §9.2.20(A)(4), which seeks to assure that the  
33 light generated by outdoor fixtures does not extend beyond the  
34 property line of the property from which the light emanates.
- 35 3. The tennis court lights as installed do not appear to meet the  
36 requirement identified in §9.2.20(3)(1)(a) that outdoor light fixtures be  
37 shielded such that light emitted are projected at a 45° degrees on a  
38 point on the light fixture from which the light is emitted. In light of  
39 above three findings he further moves that the Commission remand  
40 the zoning review permit application to the Planning Director for  
41 further consideration to ensure that 2020 Master Plan, the Dark Skies  
42 Ordinance and other applicable portions of the Village zoning  
43 ordinances are fully considered and that specific factual findings with  
44 respect to the three grounds identified above.
- 45 4. In addition §9.2.20 Dark Skies B Item 4 lighting exterior shall be  
46 shielded in such a manner as to confine emitted light within the  
47 boundary of the property from which it originated.  
48  
49

50 **SECOND: Commissioner Albert** seconded the motion.  
51

1 **Chairman Hannah** stated a motion was made by Commissioner Gollis and  
2 seconded by Commissioner Albert. Then asked if any of the Commissioners  
3 would like to comment at this time.  
4

5 **Chairman Hannah** recognized Commissioner Brawley.  
6

7 **Commissioner Brawley** stated it appears to him that §9.2.20 Dark Skies B  
8 Item 4 lighting exterior shall be shielded in such a manner as to confine  
9 emitted light within the boundary of the property from which it originated might  
10 be added as well.  
11

12 **Chairman Hannah** stated that he would also encourage that be added.  
13

14 **Commissioner Gollis** stated he would be more than willing to add that his  
15 only comment would be he thought that was what he captured in the second  
16 finding contained in his motion. But, if he didn't he is more than happy to  
17 accept that.  
18

19 **Chairman Hannah** stated he thought that those were two different portions of  
20 the ordinance.  
21

22 **Commissioner Gollis** stated he would be glad to modify the motion as  
23 suggested by Commissioner Brawley.  
24

25 **Chairman Hannah** asked Commissioner Albert if she would second it.  
26

27 **Commissioner Albert** stated that it is the basis of her second to the motion it  
28 captured it exactly.  
29

30 **Chairman Hannah** asked if there were any other comments.  
31

32 **Commissioner Gollis** asked if he could make a comment. He heard enough  
33 from the applicants to convince him that the Planning Director's decision  
34 wasn't right. That being said given the ambiguity of the Dark Skies Ordinance  
35 it's not one interpretation required in this particular case it makes a lot of  
36 sense in the testimony we heard tonight. To amend this matter in what the  
37 planning department takes another shot at it and he thinks in the long run  
38 being more specific findings is going to be helpful to the Coleman's', the  
39 Thom's' and the Village itself that is the intent behind the motion.  
40

41 **Chairman Hannah** stated he would like to encourage that also because what  
42 he is looking at. There are issues here, which specifically talk about the light  
43 rays emitted by the fixture itself. And since he personally hasn't any data here  
44 to provide either by the Village or the appellants as to exactly how this was  
45 measured and documentation to show whether or not it was at 45° degrees  
46 he is not sure he could give a statement on that. But, even so he doesn't  
47 think that is sufficient to answer Section 4 later. What he is getting to is do  
48 they all understand the difference of direct and indirect lighting? They can  
49 have lighting with a fixture that is aimed at a wall, but then it bounces the  
50 light. Well there's no light emitted from the fixture directly at something that is  
51 going to cause an issue, but the bounced light, the indirect light is going to

1 light up the whole area. In a worse case example what if it was a mirror they  
2 are certainly not having light from the fixture to 45° degrees from anywhere,  
3 but they can stand and look at the mirror and see the bulb. And that certainly  
4 doesn't meet with the intent and general reasonableness of what he thins the  
5 ordinance is trying to do for dark skies. And that's why you deal with emitted  
6 light and he would include in his interpretation of the ordinance he would  
7 include indirect light in the emitted light consideration. And so it's not just the  
8 light from the fixture, but also the indirect light that is caused by the fixture  
9 lighting the area. That is his interpretation and where he is coming from and  
10 it's what a personal interpretation as his deal with this because it doesn't talk  
11 about the fixture in Section 4. Then asked if there were any other comments  
12 and recognized Commission Albert.

13  
14 **Commissioner Albert** stated she would first like to say that Los Ranchos  
15 employees have done a great job within the limitations of the statutes and so  
16 on. She wants to compliment that and second thing is that we all know that  
17 the Dark Skies Ordinance is there to protect the dark skies that are so  
18 valuable to New Mexico we all want to protect them. None of us want to say  
19 that people are trying to destroy the night skies. The third thing is this  
20 ordinance needs to be revised.

21  
22 **Chairman Hannah** asked if there were any more comments from the  
23 Commission. Seeing none he then asked Attorney Chappell if he saw any  
24 legal issues with the motion.

25  
26 **Attorney Chappell** stated legal issues no. Stating that if the Director wanted  
27 to appeal to the Board of Trustees it is open to him.

28  
29 **Chairman Hannah** stated he believes that the Coleman's could appeal.

30  
31 **Attorney Chappell** stated he is not sure they can appeal, but the Director  
32 can accept the motion or take it to the Board of Trustees. The Board of  
33 Trustees will deal with it based on tonight's meeting.

34  
35 **Chairman Hannah** called for a roll call vote.

36  
37 **ROLL CALL VOTE: Commissioner Craig, no. Commissioner Seligman,**  
38 **yes. Commissioner Brawley, yes. Commissioner Gollis, yes.**  
39 **Commissioner Albert, yes. Commissioner Hannah, yes.**

40  
41 **VOTE:** The motion carried with a vote of (5-1) with Joe Craig voting against.

42  
43  
44 **5. OLD BUSINESS--NONE**

45  
46 **6. NEW BUSINESS**

47  
48 **Planner McDonough** asked for a 5-minute recess at 10:21pm.

49  
50 **Chairman Hannah** called for a 5-minute recess.

1           **A. SDP 14-02 Sketch Plat Review – Farmers Feed Store site redevelopment**  
2           **- A request by Scharles Wilder, Agent for the Fresquez family for a Site**  
3           **Development Plan to redevelop a commercial property as required by**  
4           **§9.2.25(E)(4) in the C-1 Zone of the Fourth Street Character Area. The**  
5           **property is located at 7008 4<sup>th</sup> St. NW and is legally known as Lots 1 & 2**  
6           **Valrica Addition, a certain tract of land situate in Los Ranchos de**  
7           **Albuquerque, Section 21, T11N, R3E, NMPM in Bernalillo County as the**  
8           **same is shown and designated on the plat filed in the Office of the**  
9           **County Clerk of Bernalillo County, New Mexico on Jan. 19, 1946 in**  
10           **Volume B3, Folio 94. This item is for discussion only; no action will be**  
11           **taken at this meeting.**

12  
13           **Chairman Hannah** called the meeting to order at 10:26 pm. And stated all  
14           the Commissioners are back, which brings them to new business. Pointing  
15           out to the Commission no action is to be taken. The Commission is to offer  
16           guidance and information on how they feel about the proposal there is no  
17           decision of any kind being made today. The planning Commission should  
18           advise the applicant in the following manner:

- 19                   1. If the proposal has merit.
- 20                   2. Is the configuration acceptable?
- 21                   3. If the Commission sees difficulty in the site development plan  
22                   conforming to the 2020 Master Plan and the Zone Code  
23                   requirements.

24  
25           Stating that no variances are required for the site development plan. Then  
26           call the applicant forward and asked her to state her name and address for  
27           the record.

28  
29           **LeeAnna Fresquez** 1420 Bonito Suenos NW proceeded to give her  
30           presentation on the site development plan for 7008 4<sup>th</sup> Street NW formerly  
31           Farmers Feed.

32  
33           **Chairman Hannah** apologized to Ms. Fresquez for keeping her so late.

34  
35           **Commissioner Craig** asked if she has been contacted about the 4<sup>th</sup> Street  
36           revitalization going on. With Sites Southwest.

37  
38           **LeeAnna Fresquez** stated yes they had.

39  
40           **Commissioner Craig** stated if they had some interaction with her as to what  
41           she is doing here. He hasn't seen what they've planned yet, but he likes what  
42           she has here it's very nice. Is there any interface with the redevelopment on  
43           4<sup>th</sup> Street they might have a good conversation.

44  
45           **LeeAnna Fresquez** stated absolutely.

46  
47           **Planner McDonough** stated they would make the connection happen.

48  
49           **LeeAnna Fresquez** stated unfortunately the architect is not here today, but  
50           she knows he's had prior experiences of developing on 4<sup>th</sup> Street recently.

1 She knows he's been real careful with the plan, but probably not to the extent  
2 that they need to be.

3  
4 **Commissioner Brawley** stated especially after the discussions of possible  
5 on street parking.

6  
7 **Chairman Hannah** stated for the record the first comments were made by  
8 Commissioner Craig and Commissioner Brawley and it's Commissioner  
9 Brawley speaking go ahead.

10 **Commissioner Brawley** stated he had only one question he thinks that north  
11 is that way if she look to the east what is that zoned.

12  
13 **Planner McDonough** stated it is zoned residential.

14  
15 **Commissioner Brawley** stated then you are going to need a fifteen (15) foot  
16 landscape buffer.

17  
18 **LeeAnna Fresquez** asked on the backside as well?

19  
20 **Commissioner Brawley** clarified on the east side. He believes it's a fifteen  
21 (15) foot set back.

22  
23 **Planner McDonough** stated he thought it was a fifteen (15) foot set back.

24  
25 **Commissioner Brawley** stated to check it because they enforce a fifteen  
26 (15) foot landscape buffer. When a restaurant went in across the street.

27  
28 **Chairman Hannah** confirmed that his memory says there is something like  
29 that as well.

30  
31 **LeeAnna Fresquez** stated she would check online.

32  
33 **Chairman Hannah** stated he had a question he sees a large parking lot on  
34 the backside. What kind of material are they talking about? Some previous  
35 site development plans are trying out some new kinds of material for parking  
36 areas because we are talking about a runoff issue.

37  
38 **LeeAnna Fresquez** stated she wished her architect could have been here  
39 tonight he can talk intelligently about that. They are still waiting on the grading  
40 portion so she knows he has an engineer working on that to address the  
41 issue.

42  
43 **Chairman Hannah** interrupted Ms. Fresquez stating that Commissioner  
44 Craig is pointing out to him the summary sheet says it's going to be gravel.

45  
46 **LeeAnna Fresquez** stated she would make sure there is some clarification at  
47 the next meeting.

48  
49 **Chairman Hannah** stated because of the issue of ponding and all that other  
50 stuff.

1 **Commissioner Craig** stated he keeps waiting for Commissioner Albert to  
2 talk about bicycle riders, but she never quite adds up.  
3

4 **Commissioner Albert** stated it's a little premature.  
5

6 **Chairman Hannah** asked Commissioner Albert if she wanted to make a  
7 comment.  
8

9 **Commissioner Albert** stated she really liked this plan she sees they have  
10 parking behind the facility off the street, which she likes. She lives on  
11 Ranchitos and right around the corner is that OM and the parking is in the  
12 back and she really likes that. It makes it feel more personable and she loves  
13 this design. Can she speak of that? Does she understand what she's talking  
14 about. Does she think that's a good idea for your business? Of course she  
15 does.  
16

17 **LeeAnna Fresquez** stated that looking at the Villages vision they wanted the  
18 eyes on this building on 4<sup>th</sup> Street to really make that more attractive to  
19 pedestrians walking around.  
20

21 **Commissioner Albert** stated she rides her bike on 4<sup>th</sup> Street honestly she  
22 loves the new 4<sup>th</sup> Street vision and the feature because if you try to ride a  
23 bike or walk on 4<sup>th</sup> Street it's not really good at all. But she loves the design.  
24

25 **LeeAnna Fresquez** thanked Commissioner Albert.  
26

27 **Chairman Hannah** recognized Commissioner Gollis.  
28

29 **Commissioner Gollis** stated he had one observation great piece of property,  
30 great location. This plan looks wonderful. This is kind of a pet peeve of his.  
31 He has been on the Commission for a long, long time he's seen a lot of  
32 development on 4<sup>th</sup> Street and he is always disappointed. In the rendering it  
33 shows wonderful landscaping and her landscape sheet is consistent with that.  
34 He is always disappointed with the outcome a couple that comes to mind is  
35 the retail, the commercial retail location north of her property on the same  
36 side of 4<sup>th</sup> Street where OM is and some other businesses. He's very  
37 disappointed by that landscaping. The auto parts store that they approved  
38 years and years ago it's pathetic. Walgreens has gotten to that point as well.  
39 It might be a question of up keep. What can she do about that, but he just  
40 mentioned it because she's owned the property awhile, she is committed to  
41 the property from his perspective living in that neck of the woods. It enhances  
42 4<sup>th</sup> Street it makes it a better place, a happier place. That's his two cents. He  
43 is delighted quite frankly to see her plan formally presented to the  
44 Commission and hopefully look forward to watching what she and the folks  
45 she is working with transform the property.  
46

47 **LeeAnna Fresquez** thanked Commissioner Gollis.  
48

49 **Chairman Hannah** stated that they work for private purposes with a number  
50 of landscape designers. To follow along with Commissioner Gollis' point you  
51 can work with landscape designers to find particular vegetation that is low

1 maintenance and it can still look good. Which is a much better thing than put  
2 something in that's going to die after a year. You will want to think up front of  
3 long-term maintenance issue in your choice of what you put in. Then  
4 recognized Commissioner Seligman.  
5

6 **Commissioner Seligman** stated just two points she thinks it's a great design  
7 and she's excited for her. One thing if you are going to have a restaurant you  
8 need to consider any outdoors music consider that you have a residential  
9 neighborhood. Best of luck. And she had one last question the lighting.  
10

11 **LeeAnna Fresquez** stated her architect is aware of it and they'll make sure  
12 they are in compliance.  
13

14 **Commissioner Craig (Mr. Craig was inaudible because of overlaying of**  
15 **conversations).**  
16

17 **LeeAnna Fresquez** responded it is right across the road from Z-Coil.  
18

19 **Chairman Hannah** stated that Commissioner Craig was speaking and to go  
20 ahead.  
21

22 **Commissioner Craig** stated he thought that was Pueblo Solano.  
23

24 **Planner McDonough** stated it is the plat shows that it's a local name Pueblo  
25 Solano.  
26

27 **Chairman Hannah** recognized Commissioner Brawley.  
28

29 **Commissioner Brawley** stated just a practical matter check with Waste  
30 Management because they have them backing up one hundred fifty (150)  
31 feet to pick up the trash and what will happen is the receptacle will end up  
32 over here. So it would be better and if you do have a restaurant make sure  
33 you make access for the grease receptacle.  
34

35 **LeeAnna Fresquez** thanked Commissioner Brawley.  
36

37 **Chairman Hannah** asked if there were any other comments from the  
38 Commissioners.  
39

40 **Commissioner Brawley** asked if Ms. Fresquez have any tenants.  
41

42 **LeeAnna Fresquez** stated not at this point no. They are still this is their first  
43 step after this was just finished up today and thanked them for their time.  
44

45 **Chairman Hannah** stated they found the proposal has merit. The  
46 configuration would be acceptable there are some suggestions for the various  
47 issues that concern the Commission. Then asked were there any further  
48 questions.  
49

50 **LeeAnna Fresquez** stated not at this time and thanked them again.  
51

1 Chairman closed the comment period.

2  
3 **7. REPORTS**

4  
5 **A. PLANNING DEPARTMENT REPORT**

6  
7 **Planner McDonough** gave the department report beginning with the database has  
8 been updated. He is now a certified flood plain manager. He is 5 months into learning  
9 the job. There has been an increase of building permits both new and remodels. There  
10 is a Planning commission Workshop he will forward information to the Commissioners.  
11 And the planning stage of 4<sup>th</sup> Street is going forward.

12  
13 **9. COMMISSIONER'S INFORMAL DISCUSSION**

14  
15 **Commissioner Albert** mentioned the Rio Grande Bike Tour.

16  
17 **10. ADJOURNMENT**

18  
19 **MOTION: Commissioner Craig** moved to adjourn the meeting at 10:50 pm.

20  
21 **SECOND: Commissioner Seligman** seconded the motion.

22  
23 **VOTE:** The motion carried unanimously (6-0).

24  
25  
26  
27  
28  
29 **APPROVED** by the Planning and Zoning Commission of the Village Los  
30 Ranchos de Albuquerque this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

31  
32 **ATTEST:**

33  
34 \_\_\_\_\_  
35 Samuel Gollis, Secretary  
36 Planning and Zoning Commission  
37