

MINUTES

VILLAGE OF LOS RANCHOS de ALBUQUERQUE
6718 RIO GRANDE BOULEVARD N.W.

BOARD OF TRUSTEES REGULAR MEETING

APRIL 13, 2011 - 7:00 p.m.

Present:

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

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

1. CALL TO ORDER

A. APPROVAL OF AGENDA

MOTION: Trustee Homan moved approval of the agenda. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously 4-0.

2. PUBLIC COMMENT PERIOD

Mike Darr, 6729 Green Valley, stated that he has some concerns with the leash law, enforcement and Animal Control. The first concern is with the financial and efficiency such as other duties the Animal Control Officer could be doing besides patrolling ditches. His second concern was the legal issues of patrolling the ditches such as the responsibility and liability for the Village. The last concern is the need of enforcement under the current ordinance. If the ordinance has some in-clarity in the law it may be time to look at amending the ordinance.

3. CONSENT AGENDA

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

- A. MINUTES – MARCH 9, 2011–REGULAR MEETING
- B. DEPARTMENT AND COMMITTEE REPORTS
 - 1. ANIMAL CONTROL

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

VOTE: The motion carried unanimously 4-0.

4. REPORTS

A. MAYOR'S REPORT

Mayor Abraham reported on the following:

- He received preliminary figures on the census data and a staff member told him that our population is 6,024 with 2757 housing units, 2576 are occupied and 181 available.
- Calico Café is changing the business. They have closed the restaurant and will re-open tomorrow as a sandwich shop called “Prime”. They will serve sandwiches and will also be a deli, Vernon’s with a Cigar Bar, outdoor patio and only acoustic music on the patio.
- A tourism award was received for the Los Ranchos Arts Studio Tour which won honorable mention for the best new event in New Mexico for 2010.
- Mayor Abraham stated that he is lucky as Mayor and Trustees and the Village to have the staff we have starting with Martin. Most of our staff is here from Linda Seebach, Fred Radosevich, Kelly, Annabelle, our Volunteer Lorilee McDowell and John McDowell. We have a very professional and well run staff. They are dedicated and do their job amazingly well. I do give them a hard time sometimes, but do want to say publicly that I appreciate them and that they are doing a very good job and I know sometimes it is not easy. We also have a good attorney and treasurer.

B. ADMINISTRATOR'S REPORT

Administrator Ward reported on the following:

- Have a new employee Cynthia Jaramillo she has taken the place of Shannon Zamarron at the front desk and comes from Wells Fargo Bank and is a very nice lady.
- Working on taking care of worn roads on 4th Street. In May we will restripe the road.
- The fire station construction is moving along
- Continue to clean up the Agri-Nature Center. The other uniqueness about Martin is that he worked for the US forest service and he is pretty handy with the chain saw and will be re-building some wildlife habitat to fulfill the name of the Agri-Nature Center. Martin has prepared a plan for that and will be presented to the board next month.

C. PLANNER'S REPORT

Planner Seebach reported on the following:

- The EPA/Low Impact Development/Green Infrastructure meetings were very eventful. EPA told the task force to design the permit for the pilot and this was done by adding watershed regulations to the existing regulations for the Phase I and Phase II MS4s. However, when the permit design was proposed, EPA flatly rejected it and said all Phase I and Phase II MS4s were expiring and the Watershed Permit would include everyone under one policy. It should be noted that EPA never issued the majority of the Phase II permits because US Fish and Wildlife never approved them.
- The next two days of the Low Impact Development/Green Infrastructure conference were centered mostly around the Watershed Permit requirements and how LID/GI could be incorporated. It was also announced that the US Fish and Wildlife were changing their rules. It should also be noted that FEMA has changed their rules and now require Fish and Wildlife biological assessments for development in regulatory flood ways. Fortunately, the Village does not

have any regulatory flood ways.

- In summary, three different Federal Agencies are headed in different directions.
- Monthly statistics have been submitted and with three months to go building permits are up, but the economy is down and so are we.
- The 2020 Master Plan is before you.

D. LEGAL REPORT

Attorney Chappell reported on the following:

- Did succeed in getting some litigation started this month. Jason Howard's attorney filed an appeal and recently filed the record proper with the court. Sidney Childers worked with Annabelle and Linda and I think we got a good record on the appeal.
- Worked on various questions on the In-Home care ordinance, Village Center, variance request and attended the Planning and Zoning Commission meeting

E. PUBLIC SAFETY REPORT

Public Safety Director Radosevich reported on the following:

- Introduced Chief Deputy Worth French, Scott Baird new field services commander and Claire McCarthy the new North Valley commander.
- Attended a meeting and discussed some issues with the El Paraiso home owners association and Los Poblano's.
- The Fire Department will host the Easter egg hunt on April 23
- Working on the North Valley Academy School Zones in which this summer will work on re-designing the signing
- Had issues at Taft Middle School regarding the sports activities going on there. The majority of the issues have been worked out.
- Talked to the Traffic Safety Bureau in Santa Fe on applying for Traffic Safety Funds
- Jeff Phillips is working on a training session this weekend at the Agri Nature Center and will have about 35 to 40 people attending. Some class room and outside activities will be held.
- Prepared a Memorandum of Understanding that will be presented tonight.

5. FINANCIAL BUSINESS

A. CASH REPORT – MARCH

Treasurer Haines presented the Cash report.

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

VOTE: The motion carried unanimously 4-0.

B. DISCUSSION OF PRELIMINARY BUDGET FOR FY 2012

Administrator Ward explained the budget as follows:

- The focus is primarily on general funds expenditures. On the revenue side, Phase 1 of 11, we continue to project a decrease in gross receipts tax
- Los Poblanos completed \$5 million building project. There are no other projects out there.
- Adjustment made month by month, construction, trade, retail and food with a 14% decrease in GRT.
- Sold Fire truck for \$35,000
- Total expectation is 14% revenue decrease, which is about \$364,000 and will continue to look at activity to make some reasonable assumptions. Expect cash balance to be \$3,366,368.00 by the end of the fiscal year. Revenue figure \$2.3 million. Expenditures to be \$1.6 million. General funds \$4 million
- Transfer \$100,000/per year out of general funds budget into general obligation bond fund.
- Repayment of \$881,770 of loan on Osuna and 4th St. The property purchase of Contreras Retail balloon payment is due October, 2011.
- Pulling \$300,000 out for open space. Cash balance to be \$3,100,000.
- Last year, we were at \$1.8 million that number should go up. In May, we may add money to the \$1.7 million as operating budget. We're not seeing the construction projects coming, which is our big revenue source and the turn over of old businesses and new businesses coming in.

Trustee McDonough stated that staff has done a great job projecting and making things balance. We are one of the few communities not struggling in making ends meet. We have a history of being frugal.

C. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2011-4-1 – A RESOLUTION INCORPORATING INTO THE VILLAGE’S 2010/2011 FISCAL YEAR BUDGET A SEVERANCE TAX BOND APPROPRIATION PROJECT GRANT AGREEMENT WITH STATE OF NEW MEXICO DEPARTMENT OF FINANCE ADMINISTRATION THROUGH THE LOCAL GOVERNMENT DIVISION TO PLAN, DESIGN, CONSTRUCT, EQUIP AND FURNISH THE UNSER MUSEUM, GRANT 08-L-G-5251C IN THE AMOUNT OF \$174,000.00

Administrator Ward stated that this 2008 Grant Agreement was signed in 2010, but was not executed and returned to the Village until now. We now have 90 days to spend this money, and he has rolled it in the budget to see what we can do with it.

MOTION: Trustee Homan moved approval of Resolution No. 2011-4-1. **Trustee Rael** seconded the motion.

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

VOTE: The motion carried unanimously 4-0.

Mayor Abraham stated that he does not want the Bernalillo County sheriffs to sit around for the items below and asked that items 8.A & B be discussed before the public hearing items.

6. PUBLIC HEARINGS AND APPLICATIONS

A. DISCUSSION AND APPROVAL OF LIQUOR LICENSE TRANSFER OF OWNERSHIP –DHARMA, INC. DBA KELLY LIQUOR – EXISTING LICENSE OWNER IS LEE INVESTMENTS

Attorney Chappell swore in those who would be speaking under items 6. A, B & C.

Planner Seebach stated that the property is on zoned C-1 commercial. Package liquor sales is permissive on C-1 commercial. The Board approved a special use permit for the new owners of the property, transferred from Lee Investments to Dharma, Inc. dba Kelly Liquors and she recommends approval of the liquor license transfer #0911.

Yisoon Park representing Dharma, Inc. and dba Kelly Liquors stated that this is only a transfer of partnership and the operations stay the same. The owners are changing but the business itself stays the same as a specialty liquor store.

Trustee McDonough asked if the people who are operating it will continue to operate Kelly's Liquors.

Yisoon Park stated that the ownership changed and Kelly Liquors is not a chain or franchise. His parents own the other Kelly location on the east side of Albuquerque. They took over the business as an expansion of the other store.

MOTION: Trustee Lopez moved approval of the transfer of Liquor License #0911, Application # 659796 from Lee Investments to Dharma, Inc. with the following conditions:

- (1) Kelly's Liquor meets all the conditions and regulations required by the State Licensing Division; and
- (2) All conditions of the Special Use Permit for Kelly's Liquor are met and adhered to in the operation of the business.
- (3) The 2020 Master Plan Section 8, 8.2.1 Commercial Objectives.

Trustee McDonough seconded the motion.

VOTE: The motion carried unanimously 4-0.

B. AN APPEAL BY JOHN AND SHARON HARRINGTON OF MANDATORY SANITARY SEWER CONNECTION AS REQUIRED BY ORDINANCE 228, SECTION 4(B). THE PROPERTY IS LOCATED AT 329 RANCHO ROAD AND IS LEGALLY KNOWN AS LOT D-1, PLAT OF LOTS A-1, B-1, C-1, AND D-1 RANCHO ACRES WITHIN PROJECTED SECTION 21, T11N, R3E, N.M.P.M., VILLAGE OF LOS RANCHOS DE ALBUQUERQUE, NEW MEXICO, FILED IN THE OFFICE OF THE BERNALILLO

**COUNTY CLERK OF BERNALILLO COUNTY ON JUNE 10, 1996.
THE PROPERTY CONTAINS 1.4062 ACRES MORE OR LESS.**

Planner Seebach stated that the Village received a letter from residents who wish to keep their name anonymous. It says “We’re writing to express our opinion in reference to the three Village home owners requesting an appeal of the mandatory sanitary sewer connection as required by Ordinance. If this is mandatory why would there even be any consideration of waiver? The reason for connecting was to protect against contamination. There should not be exceptions to this Ordinance. The process of connecting was messy, inconvenient and expensive but this burden was carried through as mandated. We strongly believe that these home owners not be granted an exception to this Ordinance and we trust that the Village of Los Ranchos de Albuquerque Board of Trustees will enforce Ordinance 228, Section 4-B.”

Ordinance 228, 4-B requires that every premise in the Village and commercial zones, which means all residences shall be connected to sanitary sewer and the 200 foot distance shall be measured by the closest point of connection on the sanitary sewer in a straight line to the connection at the septic point. On January 18, 2011 New Mexico environmental engineer Jake Ingram took on site measurements of the property. There was no direct line of sight, but by utilizing the measurement taken on the front and side of the house, it was inferred that the direct line distance between the house and the sanitary sewer stub-in is approximately 84 feet.

Ordinance Number 184, was adopted in 2003 which required sanitary sewer connection be connected within 731 days from November 12, 2003 and that was now over five years ago. Furthermore, Ordinance 228 which was adopted November 10, 2010 states that all persons shall connect to sanitary sewer. According to the records sanitary sewer service was made available to the property in August 2000. Therefore, the property has been required to connect to sanitary sewer since 2003 under Ordinance 184 and now under Ordinance 228. The as-built diagrams of the locations of the stub-in for the property are included in the packet. The current septic was permitted in 1996 when the house was built and is over 15 years old as is stated in the appeal five years or less sanitary sewer septic system. They have appealed under Ordinance 228 and they are here for their appeal. The department recommends denial of the appeal and the issuance of a determination that connection to the sanitary sewer should be made within 90 days from the date of the determination by the Board of Trustees with findings.

Attorney Chappell stated that Ms. Seebach read into the record a letter which she said the people prefer to remain anonymous as a part of the due process this becomes part of the public record. And having anonymous comments that are not part of the public record are not appropriate, It must be part of the public record of what we’re doing and if appellants are wanting to look at it they should be able to do so.

Sharon Harrington thanked the attorney for the legal comment. She said that kind of violates the whole process where an anonymous comment is made without stepping forward and making their comments in public. She said she sent an appeal letter and has been trying to follow the process for a number of years and through a number of administrations.

She has worked as much as she could in terms of understanding the process and doing the

right thing for the property and for the community as well. She said that they are one of two residences in a five acre area that continues its zone of agricultural one. When they first came and decided this is where we wanted to build our home and started the process. One of our first questions was "Well let's connect with the sewer" and that is what we wanted as we came from a city environment, we've never used septic before. And at that point in time in 1996 there was no ability to do that and it was denied. And we even asked if we could set in a pipeline and begin the development process and it was not allowed in 1996.

The planners report states that the sanitary sewer was installed in August of 2000 and that's correct. That was because their neighbors wanted to build a pool and that was the only way that they could do that. At that time, they had spent \$5,000 plus installing a septic system, so they opted at that time not to connect to the sewer. It was not required in 2000 when the sewer line came down, but things have changed and they are willing to work with those changes and they understand those changes.

She said it was their understanding that they had an exemption under a prior administration in 2003 and 2004. She spoke with Hank Rosoff, Administrator at the time, and with Juan Vigil and nothing happened so they figured they were exempt and grandfathered in.

They had the New Mexico Environmental Department come look at the system they have which has been maintained and properly committed. The NM Environmental Department said that they had probably over maintained in terms of pumping it once a year versus two years. There are only two of them on this property and it is small and he said it was fine, but of course they did verify that it was not within the 200 foot distance.

If their neighbor had never put in the pool then this would be a non-issue because they would be outside of that distance. They understand the Village's requirements to protect the ground water and they want to protect the ground water.

She said they have done things to the property above and beyond what people would normally do. For example, they put a fire hydrant, they helped Indulgences at that time purchase their portion of property, and worked as best they could with other businesses that have come and gone since that time, fended off developers, tried to maintain it as an A-1 property, installed underground lighting, and electricity at an extra expense.

Yes, sewer connection does need to be made. Our only question now and our request for exemption is not a question of if, it's a question of when.

She can appreciate the Village trying to enforce an Ordinance but there is no evidence of contamination and there shouldn't be if a system is properly maintained. The NM Environmental Department told them that septic systems have a life of 25 to 50 years depending on how it's maintained and they are 15 years into this system. Part of her request for exemption is to have more time for the viable life of the system.

They believe that the property next to them will be developed probably within the next 10 years. At that time, they anticipate that their private road will be torn up and everyone will need to connect to the system and that's when it would be a more appropriate time.

If the system did fail they would arrange for some sort of inspection or if they decided that Los Ranchos would no longer be the place that they could live and place the property for sale, and then they understand that they would need to connect.

She said she is requesting the Village's good judgment and balances in terms of community requirement versus individual private property rights and give them an exemption for an amount of time given these conditions so that they can save to put this system in.

If they have to connect to the sewer they will have to apply for a loan as their property is 100% paid for. Her husband is retired and she is trying to retire within the next couple of years. She would rather have an escrow account with the Village and put in a monthly amount and not worry about interest at this time and stage and would allow them to save up to pay for the eventuality of connecting to the sewer system.

She is appealing to the Board for a balance of private individual and community rights to come to a good reasonable exemption.

Attorney Chappell stated that as he understands it, physically there is no major obstacle to connect to the sewer because you have a good septic system.

Sharon Harrington stated that it's just a question of tearing up the road now and making it happen. One other thing she would say is that she hopes they show the viability of the appeal process. We have an appeal process here and the Board of Trustees have an ability to make a determination regarding time and again she is asking for a Judgment rather than just a mass arbitrary. She had not tried to not do it; just tried to manage within the requirement and within her personal constraints.

Mayor Abraham asked Attorney Chappell, if we are talking about precedent and the several people that the Village has forced or taken to court and have won or eventually they decided to get hooked up. How does this affect any future cases if there is no true hardship other than they want to extend the length of time that their septic tank is good for. What kind of precedent does this set in a court of law when we have about 60 or 70 people that we will be taking to court?

Attorney Chappell stated that consistent enforcement of Ordinances is very important. There is a doctrine that has been developed called Administrative Loss and that is a body that if a body that is charged with interpreting an Ordinance puts a particular interpretation on it over a period of time, that actually becomes the law. He thinks that you can run into that and you can also run into problems with discrimination with selective enforcement which could result in some other types of causes of action. He said that from a legal perspective the better defense is that if there is a hardship or something that would otherwise exist and could justify a variance under Zoning Ordinance or one of those kinds of Ordinances. Those are fairly well accepted understood judicial standards for when you make exceptions for things. Just exceptions on a case by case basis that says this one maintains properly, and this one does not on a subjective basis, probably creates issues on your uniform enforcement questions.

Sharon Harrington stated that she feels that perhaps the Ordinance is at fault, because there is an appeals process and the hardship that she is claiming is financial and that's true.

The enforcement of this in 90 days is requiring her to go out for a credit application and would require her to pay interest. She is trying to retire, and needs time to be able to do this. She does not know what the other situations are and she does not know how the State and County has helped financially in other situations.

Attorney Chappell stated the Ordinance as drafted for most years did not have an appeals provision in it at all, and so there was concern about the fact that a specific individual had absolute authority to make those decisions and from a substantive due process or procedural due process it was recommended and re-drafted and changed so in fact you would have this opportunity to present your case to the Board of Trustees rather than just to an administrator. He thinks this is a practical matter because this was just done in November of 2010 and Ms. Harrington is the first Appellant. And this board may have to decide in terms of what is an acceptable hardship and what is not an acceptable hardship. If they use a hardship definition under the zoning Ordinance, financial hardship alone is not a basis for a zoning variance and so he thinks that in that sense you are the first one to make this proposal. As the first one that has had this opportunity because this board has decided that it shouldn't be made by a single individual that's not in an elected official position.

Sharon Harrington stated that she appreciates that. One of the things that worked in terms of the septic system was that she was able to have a place to have a small dog kennel and was able to use that septic as a dog kennel at one point in time.

The Village wants farming and A-1, but then more and more regulations start and you can't burn off weeds. She is concerned that we can't use judgment here and she is concerned that there's precedence. If she can't present her case, if she can't present a reasonable solution. Other people have selected to go to court and she is trying to use good judgment and use to dialogue and discussion and say why doesn't this make sense? The only thing she is hearing is that it doesn't make sense, because somehow it weakens your court cases? Maybe that's a fact of life that I have to adjust to but that's what I'm hearing right now.

Trustee McDonough stated that he does not think that's the state. He does not believe there are any of these that are in court. There are some that have not complied that may have to be in court, but he is not aware of anything that is pending. Part of the process is to hear this appeal and issues of whether or not the appeal and as to whether or not the planning director made a decision that says it must be built or if there is an error for instance in determining the criteria that was used in making that determination. It is not the Ordinance and does not allow the Board of Trustees to have complete discretion. This is an Ordinance that was passed, adopted and enforced so it's not just a discretionary thing but there can be times when the procedures used, the measurements, all kinds of things could be in error and that is what can be reviewed.

Sharon Harrington stated that all she is asking is to give her some time to save for the sewer installation, wait until the road has to be torn up by other parties as well--that is an eventuality. What she has is a government entity telling her to tear up the road now and then tear it up in another three years. It is inefficient, non-productive and it's a waste of time and money.

Trustee McDonough stated that the Middle Rio Grande Valley has a history of ground

water contamination. And it comes from primarily septic tanks. This was started in the early 1990's. The City, County, Village and the State representatives all got together and decided that they had to do something to protect the water resources. So they leveraged federal funding, state funding, and local funding to put together a program to build sewers in the Valleys. Part of that overall effort was that the funding agencies said okay we'll do this, but all of the entities along the way have to pass an Ordinance that says people will connect. They had histories of building sewer systems and then the people didn't want to connect and if they didn't have a contamination problem right there, they didn't have a problem. And so there was an initial requirement that all the entities pass this requirement.

The other part of that is, utilities survive by having customers, and it's a business. If you make a capital expenditure and extend service to all of these places who then don't connect and don't pay for that service they can't survive it's an economic reality. If we don't utilize the utilities that are out there, they don't survive. It's a much bigger issue than if you have to tear up your driveway. Whether this board wants to be friendly and listen. There is twenty years of history that got us a significant investment in sewers in the Valley and utility expansion and the cornerstone of it is that the people need to connect and become part of the system.

Sharon Harrington stated that she understood and wanted to connect in 1996 and the governmental entity would not allow it at that time. Now after putting in a septic system and requesting to connect to the sewer, now it is double that effort to connect to the sewer and to pay development fees. She sees the Village being able to make that judgment in terms of giving her the additional time and not saying to connect in 90 days and go out and get a loan.

Trustee McDonough stated that with all due respect, you've known this was coming since 2000 when you started talking to Hank Rosoff.

Sharon Harrington stated that she said she wanted a waiver and they said fine and everybody went away. Her mistake was not getting it in writing.

Trustee McDonough responded with or started saving the money then so that. Not now.

Sharon Harrington stated that she thought she had a waiver forever and this Ordinance. has been changed how many times?

Mayor Abraham stated that they have not given anybody a waiver for any reason to his knowledge other than if it's physically impossible for the sewer to run.

Sharon Harrington stated that she knows it has not been done, but she was here before you all were. All she is asking for is time to save the money. Otherwise, what are her options? Put up my property for sale and leave and someone else will enjoy it? She does not want to do that she wants to stay another ten years. She wants to connect when it's reasonable to connect. It is a financial hardship, a financial issue to the property to tear up the roads. She expected to have some consideration here and not just kind of this mess that we fall into the rest of the world.

Trustee Lopez asked Mrs. Harrington if there are other property owners around her who

have connected to the sewer.

Sharon Harrington stated that the one that brought it in because they wanted to put in a pool.

Mayor Abraham stated that they look at the map that has all the adjacent, all the homes that have hooked up.

Sharon Harrington stated that the Board may have the wrong map. And that's one thing she did notice on the report. She explained that one is an existing commercial business and another was an adobe that was going to be torn down. It was all five acres and her family came in and they made an agreement with Indulgences at the time. They forgave them a \$25,000 loan that they owed them. They built their business on the basis of us financing this entire property for them. This was her mother in law's house that was built in 1996 and she passed away in 2000. The new neighbors came in and they wanted the pool, that's when this came in.

Mayor Abraham responded that by the looks of this everybody is connected but you.

Sharon Harrington stated that this is connected from a different situation and this was just the initial connection. It's new of course; it's going to be connected. That's commercial and some other sewer they're not connected to, this is their private sewer line that came in that was built and this is what they will connect to. She does not know where these connected, but it wasn't to this private sewer line. It was after all these people all came in. She is not arguing about the connection and she understands that it would be good for her property eventually. All she is asking for is consideration of time to save money at whatever amount and whatever the Board thinks is a reasonable amount of time so she does not have to go out and get a loan, and that would impact her financial situation.

Mayor Abraham stated that as he understands it is 84 feet. He asked Ms. Harrington if she has gotten any quotes on how much this is.

Sharon Harrington stated that she has gotten some and thinks that it's about \$4,000, \$2,000 to pay City of Albuquerque just to tell them they can do that.

Mayor Abraham stated that it's Bernalillo County Water Authority not really Albuquerque.

Sharon Harrington stated that they would have to pay for the extension of the line another \$4,000 so it's about \$10,000 for them. It is \$3,000 for the actual connection of septic then they have to pay for the portion that they didn't pay for when the private line was extended, which is another \$4,000 and then it's \$2,000. She does not have it right now. So she guess's that she will go to jail. I guess I go to pauper's prison.

Trustee Lopez stated that the map they have is telling them that everybody around her has in fact hooked up to the sewer.

Sharon Harrington stated that is right.

Trustee Lopez that that what Ms. Harrington is saying it is because it's a financial

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hardship.

Sharon Harrington stated that is correct.

Trustee Lopez stated that our attorney is saying that generally, at least in zoning cases, financial is not a hardship. Is that correct Mr. Chappell? .

Attorney Chappell stated that the Zoning Ordinance has a provision that says financial hardship condition alone is not a justification for a zoning variance. There is no criteria in this Sewer Ordinance as it's been passed. The only criteria is that there is a certain amount of time to connect and if you do not connect, then you do that. A provision was added that said notwithstanding if the owner after proceeding with due diligence cannot complete the connection within the time required the Village can adjust the time period, but that takes a reasonable diligence kind of thing.

Trustee Lopez asked what happens if they don't?

Attorney Chappell stated that there is a provision in the Ordinance which indicates that they can be required by injunction to do so and other remedies in court, because of the potential public usage and so forth on which the Ordinance was based.

Trustee Lopez stated that the reason he is asking the question is that he has had other Village residents approach him about this and they came to the conclusion that they had to connect.

Sharon Harrington stated that she agrees that she has to connect.

Trustee Lopez stated that these residents came to the conclusion that they had to connect within the time frame that was required. They had to go out and borrow the money and pay the plumber. This is not-he does not believe unusual.

Sharon Harrington stated that she is not saying that it is. She is just saying that the Board has the ability to make a judgment in terms of time. She is asking for additional time to save so that there is not a continual impact to the roadway and it's not a financial hardship for her.

Trustee Rael asked Ms. Harrington how much time she is asking for.

Sharon Harrington stated that she has asked for ten years and that was based on the viability of the septic system or if any of three things occurred first.

Trustee McDonough stated that he understands and the Board is in the position of having to make decisions kind of unilaterally, treat everybody the same.

Sharon Harrington stated that it is a shame because the merits of the case and these other people that connected probably had some financial help.

Trustee McDonough stated that there is a County program. The PIPE PROGRAM with the Bernalillo County for people that need assistance to run that line from the connection. The City has a program where you can defer the UBC charges and pay over time.

Sharon Harrington stated that is at 7% interest.

MOTION: Trustee McDonough moved to deny the appeal and issue a determination that a connection to the sanitary sewer should be made per the Ordinance within 90 days with the following findings:

- According to the Albuquerque Bernalillo County Water Authority the sanitary sewer was installed in 2000, the property has been mandated to be connected to the sanitary sewer. Since the sanitary sewer became available, the measurements on site are 84 feet, and therefore the property is not exempt to the 200 foot rule.
- The 1996 septic system does not meet the requirements of Sec. 44 D, 2 for a system less than five years old.
- The Master Plan section 4.3.1, water quality goal is to practice water conservation to protect against ground water contamination within the Village. The section 4.3.2 objective is to enforce the mandates for sanitary sewer connection throughout the village.

Trustee Rael seconded the motion.

VOTE: The motion carried unanimously 4-0.

Sharon Harrington stated that she is very saddened by this occasion. She thinks that it tells her that there is no viable appeals process and this reminds her of Obama care.

C. AN APPEAL BY ROBERT PADGETT OF MANDATORY SANITARY SEWER CONNECTION AS REQUIRED BY ORDINANCE 228, SECTION 4(B). THE PROPERTY IS LOCATED AT 8508 RIO GRANDE BLVD. AND IS LEGALLY KNOWN AS TRACT 36, M.R.G.C.D. MAP 25 WITHIN PROJECTED SECTION 21, T11N, R3E, N.M.P.M. THE PROPERTY CONTAINS .7 ACRES MORE OR LESS. SSS-11-02

Planner Seebach stated that Ordinance 228, section 4 (B) requires every premise not in the Village center or commercial zone to connect to public sanitary sewer when sewer is available within 200 feet. On August 5, 2010, Jake Ingrim from NMED took on site measurements on the property. There was no direct line of sight to measure the distance between the closest sewer connection and the point of connection. However, using measurements taken on the side of the house it was reasonable to infer that the direct line distance between the house and the sanitary sewer was approximately 112 feet. Based on the 112 foot measurement by NMED, both the Village and NMED determined that the property must connect to the sanitary sewer system under Village Ord. 228. NMED Permit # AD950041 dated 12/21/95 is a modification to an existing system and shows the lot size of 2 acres. The permit may not be valid for the .7 acre lot and there is no record of when the septic was originally installed. The department recommends the denial of the proposal and the issuance of the determination that connection to sanitary sewer shall be made within 90 days from the date of this determination by the Board of Trustees.

Robert Padgett, 8508 Rio Grande, stated that he has come before the Board to take on the issue of the way it was measured. The NMED came out and it's the same letter that I submitted. The actual distance was over 200 feet, measured from the clean out and stub.

His objection is the way the Los Ranchos Planning Department measured the property by the straight line method. When he read the Ordinance, section 4 (B) it states “if straight line access is not available if you use a straight line procedure there’s no access to it.” It is going under the house and under the permanent structure so there is no access. The Ordinance still states and continues if there’s no straight line access to the public sanitary sewer and it’s not available to the premises over a private easement or property owned by the owner of the premises the 200 foot distance shall be measured along the closest route possible. That closest route possible was the measurement that the NMED came out and measured on the property and it was over 200 feet. He does not have any objections to hearing Chapter 22, section 4 C, the section where you had the system certified and tested and approved based on the requirement. To make sure the system is working properly, sized up properly and functioning properly. And not leading to waste or any contamination.

Trustee Homan asked Mr. Padgett if he had any record of the NMED measurement that stated that they calculated it over 200 feet.

Robert Padgett stated that he did not. When they came out it was given to the NMED and they met with Linda that day or the next day. Jake did it and took the notes with them.

Planner Seebach stated that he took the straight line measurement and then at Mr. Padgett’s request he measured how far it would be to go around the house and go back to the sewer.

Trustee Homan asked Ms. Seebach if it is common to require basically a tunneling under the house.

Planner Seebach responded no and that most straight line measurements are taken when there is a building in the way and it’s not required to go under the house at all. Most people in the village have had to go around their house.

Trustee Rael stated that the Ordinance does say you measure a direct line from where the clean outs are, isn’t that right?

Attorney Chappell stated that one of the requirements in the old Ordinance was that if you met this criterion or if required by Ordinance or regulations of NMED, the NMED method of measuring is a straight line regardless of buildings. So if there is a person who builds a 12,000 square foot house they shouldn’t be exempt just because you have to go around it. Somebody who has a 1,000 foot house would have to build it because you go through the same house. The NMED method which we advised is a straight line without regard to the buildings. Consequently that language was adopted in the Ordinance under subsection B, which says that 200 foot distance shall be measured from the closest point connection on the public sanitary sewer in a straight line notwithstanding that structures may be located between the connection points to the point where the liquid waste disposal line of the residence is located on the premises connects to the septic system’s clean out point.

The Ordinance was clarified to say that it used the same method of measurement as NMED, and part of that is if somebody has a 1000 foot house you can make them put it in and if you have a 12,000 foot house you have to go around and it could be the same

distance between the connection point and the sewer in the street. That is not what was intended from this. This definition is basically what NMED does and that's what apparently he has not read before, but this is what they did to determine the 84 foot distance in this particular case. Because we do allow NMED to do the measurement. The Village does not do that. He asked if he was looking at the wrong one.

Trustee Lopez stated that this is 112.

Attorney Chappell stated that he is looking at the wrong one. NMED makes that their standard and that is now the same statement we have in our Ordinance.

Robert Padgett stated that in the Ordinance section B where he was reading it says notwithstanding the foregoing is straight line access. If you do a straight line you don't have access to it. It's under the structure and there is no access to it. Then it further reads that straight line access to the public sanitary sewer is not available. He does not have access to the sewer going under the building. The 200 foot distance will be measured under the closest route permitted that's when NMED came out and measured.

Attorney Chappell stated that the language is from the former Ordinance, for instance the access is available over public, and you can take it over public access or the private property of an owner. What that says is that if the connection point of the sewer line is across somebody else's property you come down and follow the easements or to the private property of the owner in order to make it. The access point is an access issue rather than a distance issue.

Robert Padgett stated that it does not say that. It just says a straight line access. There's nothing about the connection point on that line. The straight line access to the public sanitary sewer is not available to the premises over public or private easement or across property owned; the 200 foot distance shall be measured along the closest route permitted. It just states "access" it doesn't talk about type of access.

Trustee Lopez stated that in Jake Ingram's letter, from NMED to the Village on March 24, 2011. There are important statements in that letter and asked Mr. Padgett if he has seen that letter?

Robert Padgett stated that he has not and was not copied on that letter.

Trustee Lopez stated that it reads "There was no direct line of sight path to measure the distance between the closest sewer connection point and the house clean outs, located in the rear of the house. By utilizing the measurements taken on the side of the house, it is reasonable to infer that the direct line distance between the house clean outs and the city sewer is approximately 112 feet as estimated based on dimensions taken along the front side and rear of the home." He has to presume that you own that land and you own the front side and the rear. They measured 112. You're saying it's more than 200. That's not correct.

Robert Padgett replied "no." The straight line access is approximated at 112. The straight line on the clean out to the stub is 112, 114. That's the approximation that they scaled off. That is not what he has a discrepancy on. A straight line access goes under the house under the buildings, and the structures.

Attorney Chappell stated that there is some confusion perhaps in the words. Access implies a legal right. Access is not a practical right to do something. In other words you can have an access easement to cross an arroyo that you cannot cross. It's still access. Access is the legal term, the legal right to do so as opposed to the practical ability to do that and he thinks that's the way the Ordinance was written. That is where some of the confusion is and maybe the Ordinance is not clear in all of those aspects but he believes that access is not a practical approach but a legal right to do so. That's the reason it mentions across an easement or across the property line.

Mayor Abraham stated that we have had to go by that, because it's very subjective. Someone will say "I don't want to take out that rose bush or I don't want to take out that huge tree". The Village goes by the fact wherever the connection point is by straight line. Anyone can come up with any kind of measurement saying well we've got to route it this way and now its 201 feet. We have always gone by the straight line method whether it goes under the house or not. You don't have to take it under the house but you are required to follow the Ordinance if it's less than 200 feet under the house.

Trustee Lopez stated that in this case it is.

Robert Padgett stated that he had a comment on the word "access." It is not defined and you can interpret it in different ways. The way I interpret it is if you go straight line under the house how can you access it under the house? How can you access it? You can't.

Trustee Lopez stated that however, you would not go under the house.

Robert Padgett stated that is why they measured around, and it has words that the 200 foot distance shall be measured along the closest route permitted.

Administrator Ward stated that in the sentence that Mr. Padgett is reading where it mentions access to the premise. The definition of premises means "any lot or combination of lots together with the development thereof." The premise what we would usually think of is a house-the premise is actually a property.

Robert Padgett stated that he does not have any objection to a premise being called a property. You have a straight line going on the premises you still can't access the line once it's under the house.

Trustee Lopez replied that is not correct Mr. Padgett, because Mr. Ingram from NMED measured 112.

Mayor Abraham asked Mr. Padgett what he thinks the distance is.

Robert Padgett stated that the 112 isn't what they measured. When he came out he measured over 200 feet around the back of the property, down the side, down the right of way and back to the stub in. He measured 200 feet and the 112 is when you take those measurements and you do a mathematical calculation and you find the straight line. You can't really pull that distance. You can only do a scaling or an approximation.

Trustee Lopez stated to Mr. Padgett that it is unfortunate that he does not have a copy of

the letter, because the letter says 112.

Mayor Abraham stated that if your connection point is less than 200 feet whether you go under the house or whatever, it requires you to follow the Ordinance. Even if connection is going to end up being that you route around the house and it ends up being 250 feet, you're still required if it's less than 200 straight line. The access point that Mr. Padgett is referring to that you're not going to have access if you take it under the house, we're not expecting you to take it under the house, but we are expecting you to be required to hook up if you're less than 200 feet even straight line.

Robert Padgett responded to the Mayor that based on those comments the access point. He is not expected to take it under the house so he has no straight line access and it says 200 feet distance should be measured along the closest route permitted.

Trustee McDonough stated that if Kelly said, the definition of premises is your property, not the house, your property, if you re-read that sentence that says "Notwithstanding the forgoing, if straight line access to the public sanitary sewer is not available to the premises, to your property, not to the house, not to the connection point, to your property. All this says is if you don't have a straight line to the connection point to your property, then you follow a path of public access, which is what Mr. Chappell was saying. It is a legal access issue getting from the sewer to your property, not to your house. All this says is if you have to cross somebody's property to get to your property, you have the right to go around their property. You are not forced to go through their property it is a totally different issue than connecting to your house.

Robert Padgett replied with okay.

Trustee McDonough stated that being said, then it goes back to 200 feet from the sewer to your clean outs on a straight line, because you don't have that condition and that's the way the Ordinance is read. He asked Mr. Padgett if he can physically connect to the sewer going around his house?

Robert Padgett stated that yes he can over 200 feet.

Trustee McDonough stated that it is over 200 feet going around his house, but for all the things they have talked about the intent, the need and the reasons why we have this. He would offer that if he can connect to the sewer, that's the thing to do and that's why the Ordinance is in here.

Robert Padgett stated that he reads it differently he does not have straight line access.

Trustee McDonough stated that he appreciates that.

MOTION: Trustee Rael moved to deny the appeal making the determination that connection to the sanitary sewer shall be made within 90 days from the date of the determination which is July 12, 2011 with the following findings:

- Chapter 22 Ordinance 184 as amended, 228 Section 4 (B) requires mandatory connection to sanitary sewer system when sewer service is available within 200 feet.
- The distance shall be measured from the closest point of connection to the public

sanitary sewer in a straight line notwithstanding the structure may be located between the connection points to the point where the liquid waste disposal line of the residence located on the premises connects to the system clean out point.

- On site measurement by NMED staff member reasonably determined that the closest point of connection to the public sanitary sewer to the point of where the liquid waste disposal line of the residence connects to the septic tank was 112 feet, therefore the property is not exempt from the 200 foot rule.
- The existing septic tank is of an undetermined age and the NMED permit dated 12/21/95 may not be valid permit for the .7 acre property.
- The 2010 Master Plan 43.1 water quality goal is to practice water conservation and prevent well water contamination within the Village. Section 43.2 enforce the mandate for sanitary sewer connection throughout the Village.

Trustee McDonough seconded the motion.

VOTE: The motion carried unanimously 4-0.

D. AN APPEAL BY STEPHEN CURTIS OF MANDATORY SANITARY SEWER CONNECTION AS REQUIRED BY ORDINANCE 228, SECTION 4(B). THE PROPERTY IS LOCATED AT 6029 REDONDO COURT NW AND IS LEGALLY KNOWN AS LOT 37 OF LOTS 1-53 OF THE SECOND PLATTING OF ROB-LEE MEADOWS, A SUBDIVISION IN SCHOOL DISTRICT 4, ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO COUNTY, 1948. THE PROPERTY CONTAINS .88 ACRES MORE OR LESS. SSS-11-03

Planner Seebach stated that Ordinance 228, section 4.B requires that every premise not in the Village Center commercial zone shall connect to the public sanitary sewer. The sanitary sewer service is available within the 200 foot according to the 200 foot measurement rule. On September 13, 2010, Jake Ingram and Steve Walker both of NMED took on site measurements on the property with both a range finder and a rolling wheel. They determined it was that the distance from the closest point of connection to the public sanitary sewer in a straight line to the point of liquid waste disposal line that the residence connects to the septic system was 189 feet. Based on the 189 feet measured by the NMED both the Village and NMED determined that the property must connect to sanitary sewer system. In the Appeal statement, it was acknowledged that the direct line measurement was 189 feet. The Appeal statement also said that the system was newly installed approximately 5 years ago, NMED Permit # AD060003, dated April 17, 2006 was for a modification to an existing system and which does not qualify as a new system being less than 5 years old. The department recommends denial of the appeal and an issuance of a determination that a connection to the sanitary sewer shall be made within 90 days of the date of the determination by BOT.

Stephen P. Curtis 6029 Redondo Ct., stated that he has been living here since 1986 when his house was built. He said there is a two hundred foot exception to this Ordinance and he assumes that was done for a reason to address potential hardships that were incurred by

people who are farther than 200 feet. There is some recognition that there must be a limitation on forcing people to connect because of hardships. He said he has a plat that he wanted to show the Board that he originally submitted to the bank for the loan.

He explained that the manhole is in the middle of the circle on Redondo Court and the clean out is back behind the house. If you measure from the clean out to the manhole, this straight line underneath the house or through the house. However you want to do it, is 189 feet. I will have to put it around the garage and probably through the driveway and the closest point is right through the front yard and out to the manhole—that is 225 feet.

Mayor Abraham asked if there is no stub out, or is it just the manhole?

Stephen Curtis stated that they put a manhole in here. He is told that the stub out is about six and half feet down. He said they did not put a ---well, I guess I don't know.

Mayor Abraham stated that there should be a stub out at the curb.

Stephen Curtis stated that Rodrigo Eichwald told him it was about six and one-half feet down. They measured this at 28 feet, 28 inches down, and the difference is twenty eight minus six and one-half--70 so it is about 50 inches difference. If you run it 225 feet, and he does not think you have got enough rough for a quarter inch per foot, so that's going to be problem. In any event, he has a well hooked up to a sprinkler system that goes in the yard and pipes running throughout the yard carrying the water. He also has a drip system that connects to the City water out front that has three lines going to various places mostly along here and back, and in the rose garden. When he had the septic system put in or re-done, he put a new drain field in 2006. The tank was fine but the drain field was compromised. A new drain field was put in and, when they did that they dug the trenches tore up the sprinkler system and the drip system. He ended up having to replace every drip system, every dripper on the west side of his yard, because they tore up that pipe and some dirt got in it and was clogging everything up. It is going to be a hardship and received an estimate of about \$5,000 or \$6,000, plus he does not know how much, another \$3,000 or \$4,000 if you have to put in a lift station, which may have to be done. If the difference between 78 and 28 inches that is 50. At 225 feet, he calculates he needs a 56 inches drop.

Mayor Abraham said he calculates 55.

Stephen Curtis stated that is probably going to be a problem. He thinks that to find the Ordinance to measure 200 feet through a house is not reasonable. He feels that people are being treated similarly situated in a different way. If he has a house in the way he can't do it and if someone else is 189 feet, that's fine, but you are treating us differently. He thinks regardless of the straight line distance, he is being treated differently than somebody who does not have that problem. The disparate impact on people similarly situated causes this interpretation, if that's the way you do it, to be arbitrary and capricious and he feels the District Court would find that. He is prepared to argue that if he needs to, but he does not think it needs to get that far, because the Ordinance discussed it. He does not think the interpretation is reasonable the notwithstanding clause doesn't mean what it says. So he does not think it has to get to the point of the interpretation of being arbitrary and capricious. If you look at the Ordinance it says if "straight line access to the public sanitary sewer is not available through the premises over public or private easements or across property owned by the owner of the premises, the 200 foot distance shall be

measured along the closest route permitted” any other interpretation of that doesn’t make sense. He asked that the Board determine that the Ordinance 184 as amended by Ordinance 228 does not require him to connect for the reason that it doesn’t really apply --- 225 feet and you cannot reasonably measure it at 189. It is going to be a hardship especially because of having to possibly put in the lift station.

Mayor Abraham stated that from layman’s terms, because you attorneys can argue what you want. He does not really think it’s arbitrary and capricious if they have made every other resident measure their distance that way. They are treating everyone; we’re trying to treat everyone fairly. The Village has made other people put in lift stations if necessary also. He would hope that that difference in five feet would be fine that you wouldn’t have to put in a lift station, but we have treated everyone the same way and we are not picking anybody out, to his knowledge. That is just the way we are interpreting the Ordinance.

Administrator Ward: I was just going to say there was a bit of a similar situation down a little bit south of where this property is and the stub actually was put in at 4 to 6 feet and there is a process that the owner is going through to lower that down to the proper 6 foot which is what he requires and so the lift station were gone in that case by adjusting the level of the stub in.

Trustee McDonough stated that back when all of this began and the City was trying to determine all of these rules, it was pretty apparent that when they came into the Valley to run sewers, virtually everyone’s sewer comes out the back of their house through a septic tank. It is not the exception that yours comes out the back-- it is the rule. It is an odd case where it comes out the front. So in setting those distances the concern was what you’re talking about, the lift station. How far could you get away and not have to pump into the sewer that was the guiding light as he recalls and they knew everyone was coming out the back and that 200 feet, as a gauge was as it’s written into the Ordinance. The bulk of the people were coming out the back so you are not being treated unfairly because your sewer is coming out the back--that was fully anticipated.

Trustee Lopez moved to deny the appeal and issue a determination that connection to the sanitary sewer shall be made within 90 days from this determination which is July 12, 2011, with the findings:

- Chapter 22 of codified Ordinance 184 as amended by Ordinance 228 section 4 (B) requires mandatory connection to the sanitary sewer system when every premises not included in paragraph 4 (A) above shall connect to public sanitary sewer when sewer service is available within 200 feet.
- The 200 foot distance shall be measured from the closest point of connection of the public sanitary sewer in a straight line notwithstanding that structures may be located between the connection points to the point where the liquid waste disposal line of the residence located on the premises connects to the septic system clean out point on sight.
- Measurements by two NMED staff members utilizing both rolling wheel and a range finder determined that straight line measurements from the closest point of connection on the public sanitary sewer to the point where the liquid waste system disposal line of the residence connects to the septic system was 189 feet, therefore the property is not exempt from the 200 foot rule.
- The modification to an existing system in 2006 does not qualify as a new system

and therefore does not meet the requirements of section 4 (B) (2) for a system less than 5 years old.

- The 2020 Master Plan Section 4.4.3.1 Water Quality Goal is to practice conservation and prevent ground water contamination within the Village. Section 4.4.3.2 objectives enforce the mandates for sanitary sewer connection throughout the Village.

Trustee McDonough seconded the motion and also noted that the as-built drawings that were provided shows the sewer stub as seven feet deep and should be okay.

Stephen Curtis stated that they told him that the manhole was seven feet deep, but the stub out would be six and one-half so maybe they did it differently.

7. OLD BUSINESS

A. DISCUSSION AND APPROVAL TO ADVERTISE IN SUMMARY AN ORDINANCE AMENDING ORDINANCE 183, SECTION 2 DEFINITIONS AND SECTION 6(B) PERMISSIVE USES, ADDING SUBSECTION (11) AND SECTION 10(B)(q) PROVIDING FOR A PERMIT FOR IN-HOME CARE, ALLOWING AN ANCILLARY KITCHEN IN A SINGLE FAMILY RESIDENCE FOR A DETERMINED PERIOD OF TIME TO ACCOMMODATE IN-HOME CARE.

Planner Seebach stated that after this ordinance was introduced the first time as the In-Home care giving she met with Mr. Chappell and this is the result of the Ordinance.

Attorney Chappell explained the Ordinance. The ancillary kitchen is for the care giver and not for the person receiving the care. You have to have an In-Home care giver. If there is a necessity and approved by a treating physician. We do not require an In Home care permit for members of the immediate family.

Trustee Lopez stated that basically the task force ran for over a year and one of the things that came out was the issue of in-home caregivers and a desire to have an Ordinance for this purpose

MOTION: **Trustee Rael** moved approval to advertise in summary an Ordinance amending Ordinance 183, Section 2 definitions and Section 6(B) permissive uses, adding subsection (11) and section 10(B)(q) providing for a permit for in-home care, allowing an ancillary kitchen in a single family residence for a determined period of time to accommodate In-Home Care.

Trustee Lopez seconded the motion.

VOTE: The motion carried unanimously 4-0.

8. NEW BUSINESS

A. DISCUSSION AND APPROVAL OF MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF BERNALILLO AND THE VILLAGE OF LOS RANCHOS RELATING TO SAFETY SERVICES

Fred Radosevich stated that the MOU (Memorandum of Understanding) will provide up to \$5,000 for training for the deputies within the North Valley and \$5,000 of equipment to be assigned for at least 3 years and the large vehicles to be stored at the Fire Department once they move out.

Trustee Rael asked if funding additional patrol vehicles are in addition to.

Fred Radosevich stated that on page 1, section 2, under authority. They are not convinced this has to go before the County Commission and would like to put some wording of “upon review and approval of Bernalillo County”. On page 2, under the Village of Los Ranchos, (D) “reimburse up to \$5,000” and also on (E). change from “provide” to “reimburse”.

Trustee Rael asked if he could explain what that means.

Fred Radosevich stated that say we start having a specific problem within the Village that requires some additional patrol then we would have a revenue fund.

Trustee Rael stated that it should say Los Ranchos de Albuquerque.

Trustee McDonough asked what he anticipated budgeting for that.

Fred Radosevich stated that those amounts will be fairly small and not more than a couple of thousand dollars at a time.

Administrator Ward stated that he thinks this is a maximum of \$5,000 and we can set those amounts aside within the budget and as those needs come up we can manage it.

Trustee McDonough stated that it states under C “shall provide secure space within the Fire Department” are we committing that area as opposed to some place else?

Fred Radosevich stated that the reason is the lack of security. Once the Fire Department moves out we won’t have the people there seven days a week and we won’t have the security we have now.

Trustee McDonough suggested “or shall provide a secure place”.

Trustee McDonough stated that we are entering this Memorandum of Understanding and there is no length of terms.

Fred Radosevich stated that in section 12 Review. The MOU will be subject to initial review 6 months after effective date and every two years thereafter.

Trustee McDonough asked what is initial review. It doesn’t sound like it has to be re-authorized every two years.

Attorney Chappell stated that it is a little vague and does not see an opportunity to amend. The only way to resolve this is a 90 day notice of termination.

Attorney Chappell stated that on paragraph 13, all proceeds or equipment received during either parties' participation in MOU shall survive termination.

Trustee McDonough stated that we are turning over all this equipment and he has a concern that if we turn over all this equipment and in July there is a turn over administration and they terminate the agreement. He would like a minimum of a year or subsequently reviewed every two years.

Attorney Chappell stated that what you would typically like to see is a specific term subject to extension, and could be terminated earlier for some cause if it wasn't working.

Trustee McDonough stated that he does not understand why we would not put specific term renewal language.

Fred Radosevich stated that he does not like to put terms for the reason that on Government we don't always get those extended in time and if you want to put a two year term they would probably agree to it.

Mayor Abraham stated that in substance, Mr. Chappell can tweak it a bit as long as the Trustees know the MOU.

Administrator Ward asked if the Board is saying you agree on the general terms and laying out the scope of, we can rewrite the legalese, and would like a clear term of a two year term.

Trustee McDonough asked if this has gone through any legal. Are all uniformed officers writing this agreement? There are no problems with the arrangement but the language needs to be tweaked.

MOTION: **Trustee McDonough** moved approval of the Memorandum of Understanding concept terms pending review of the MOU by the attorney. **Trustee Rael** seconded the motion.

VOTE: The motion carried unanimously 4-0.

B. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2011-4-2 TRANSFER OF VEHICLES TO BERNAILILLO COUNTY SHERIFF'S DEPARTMENT

Fred Radosevich stated that this is the second part of the MOU in order for us to transfer the older equipment to Bernalillo County this allows us to sign over the titles.

Trustee Homan moved approval. **Trustee Rael** seconded the motion

ROLL CALL VOTE: Trustee McDonough-aye; Trustee Homan-aye; Trustee Lopez-aye;

Trustee Rael-aye.

VOTE: The motion carried unanimously 4-0.

C. DISCUSSION OF SIGN ORDINANCE RELATING TO THE REMOVAL OF BILL BOARDS

Administrator Ward stated that this Ordinance was put into place on August 22, 2001 to remove the existing billboards. One owner has approached us about reconsideration and we want to pursue removal or an alternative to amend the Ordinance.

Mayor Abraham stated that there was not a whole lot of discussion in 2001 and Marcello for one had never heard of it and he has front and back. It pays his utilities and may have some legal challenges if we take them down.

Trustee McDonough stated that it was 10 years ago.

Trustee Homan stated that the Planning and Zoning Commission had a lot of discussion. Part of the discussion was an effort to stop proliferation of additional billboards being placed on every corner.

Attorney Chappell stated that he did on behalf of the New Mexico Sign Association stop the Ordinance from going into effect.

Trustee McDonough stated this a process that they could be successfully defended and that they were put on notice for 10 years.

Attorney Chappell stated that the standard method of phasing out grandfathered uses is to give a reasonable period of time.

Trustee Rael asked if we would have a problem if we were to grandfather the ones that are there and not allow any others.

Attorney Chappell stated that we can extend the Ordinance which allows only existing signs and prohibit any other billboards.

Trustee Lopez stated that to grandfather these is not an unreasonable situation.

Trustee McDonough stated that if we don't want billboards we're going to ban them. Why would we grandfather the five that we've given them 10 year notice that we're going to sunset?

Trustee Homan stated that we talked about electronic signs and it is time to review the sign ordinance. One of things that we talked about were the issues of the portable trailer signs and some of those exist.

Trustee McDonough stated that the billboard is one issue that we can make a decision on, either they stay or go.

Administrator Ward stated that the time period has passed and the owners of property have already been notified and other than Clear Channel, other owners of billboards have been notified. Would the measure be to have the village stir them up?

Mayor Abraham stated that a letter be sent and have Mr. Chappell write the letter to each one of the owners

9. TRUSTEES INFORMAL DISCUSSION

Trustee Lopez said he received a letter from Taxation and Revenue and they are offering free drivers license checks for governments.

Trustee Rael stated that the graffiti at Millers Feed was cleaned up and looks good.

Trustee Homan stated that the cub scouts which is part of pack 8 and are one of the older Cub Scout groups in the state. Apparently are a dying pack and down to one group here in the whole northwest section in the greater Albuquerque area will have some recruiting on May 2nd and will be at our fire station next door.

10. ADJOURNMENT

The meeting was adjourned at 10:13 p.m.

APPROVED by the Board of Trustees of the Village of Los Ranchos de Albuquerque this _____ day of _____, 2011.

ATTEST:

Annabelle Silvas, Village Clerk