

MINUTES

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

BOARD OF TRUSTEES REGULAR MEETING

JULY 9, 2008 -7:00 p.m.

Present:

Larry P. Abraham, Mayor

Donald T. Lopez, Trustee/Mayor Pro-Tem

Tim McDonough, Trustee

Pablo R. Rael, Trustee

Mary Homan, Trustee

Kelly S. Ward, Administrator

Annabelle Silvas, Clerk

Linda Seebach, Interim P&Z Director

Nancy Haines, Treasurer

Martha King, Attorney

Greg Perez, Fire Chief

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

The Village of Los Ranchos' Governing Body held its Regular Meeting on Wednesday, July 9, 2008 in the Warren J. Gray Hall. The Mayor called the meeting to order at 7:14 p.m.

Mayor Abraham stated that a closed meeting was held at 6:00 p.m. on July 9 and only those items stated on the posted notice for the closed meeting were discussed.

MOTION: Trustee Lopez moved approval of the Mayor's closed meeting statement. Trustee Homan seconded the motion.

VOTE: The motion carried unanimously, 4-0.

A. **APPROVAL OF AGENDA**

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

VOTE: The motion carried unanimously, 4-0.

2. **PUBLIC COMMENT PERIOD [3 MINUTE TIME LIMIT]**

Frank Mangano, 4300 Rio Grande NW, stated his concerns with the Ditches with Trails Committee continuing their plans to pave the ditch trails. He asked that the Village continue to support the Dietz Farm neighborhood's position of not changing the ditch trails.

3. **CONSENT AGENDA**

A. **MINUTES – June 18, 2008**

B. **DEPARTMENT AND COMMITTEE REPORTS**

1. LAW ENFORCEMENT/BCSD
2. FIRE
3. ANIMAL CONTROL

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

VOTE: The motion carried unanimously, 4-0.

4. REPORTS

A. MAYOR'S REPORT

Mayor Abraham reported that:

- AT&T will sign the lease for inclusion on the cell tower in 2 or 3 weeks.
- Our internet is being upgraded to carry more capacity and we will be looking at a system which will broadcast WI-FI throughout the park
- He thanked Chief Perez for the fire works display on July 4
- The Lavender in the Village Festival occurs this Saturday and Sunday, July 12 & 13, with a sold-out Barn Dance on Friday, July 11
- It has taken 5 years but he finally got the Post Office to input every address in the Village into their national database. As of July 1, anytime your address is inputted by any bulk mailer, magazine, or UPS it will automatically populate Los Ranchos, New Mexico.

B. ADMINISTRATOR'S REPORT

Administrator Ward reported that:

- Arturo will return to work on Tuesday, July 15, on light duty
- A temporary employee, Eris Gutierrez, was hired to assist with parks and maintenance. He is also a fire fighter volunteer.
- Changes were made to the previous Fiscal Year budget to align with actual expenditures
- Final approval of the 2009 Fiscal Year budget is on the agenda this evening
- A TPTG meeting was held last week regarding funds for the bike lane from Chavez to Montañño but it was kicked up to the TCC meeting with no recommendation
- Taft Middle School asked for more time to determine how the sod would be replaced on the field

C. PLANNER'S REPORT

Planner Seebach reported that:

- Building permits for new housing starts are increasing
- The Village flood damage prevention ordinance was submitted to FEMA
- The P & Z Commissioners voted to forward to the Board the site development plan amendment
- The P & Z Commissioners also gave final plat approval for the Seth Markham subdivision

D. LEGAL REPORT

Attorney King reported that:

- She is working on various agreements
- She is working closely with the Interim P&Z Director and Administrator on a variety of legal issues
- They are waiting for oral agreements and a decision in the Landau case
- The decision from the court on Neff vs. VLR affirmed the Board's decision and findings on the 280 foot setback from December 2007

E. FIRE DEPT. REPORT

Fire Chief Perez reported that:

- He wanted to thank the Mayor for the nice words regarding the 4th of July celebration
- Gemini Fireworks, TNT Fireworks and Porky's Pride Barbeque donated fireworks for the event
- 4th of July was uneventful and fairly quiet in the Village of Los Ranchos
- There were 82 calls for the month of June
- The ISO report was presented to the Board and he also has a more detailed report if any more information is needed.

Trustee McDonough requested that a presentation be made to the Board at next month's meeting on the ISO findings including a status of fire protection in the Village and what would need to be done to improve the Village's ratings.

5. FINANCIAL BUSINESS

A. CASH REPORT – JUNE

Treasurer Haines reported that the ending cash balance for the fiscal year was \$7,397,460.19. The year-to-date revenues exceeded expenditures by \$4,943,765.99.

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

VOTE: The motion carried unanimously, 4-0.

**B. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2008-7-1 –
REVISING THE 2007/2008 FISCAL YEAR BUDGET**

Administrator Ward said some of the big items that are being moved to the current budget are the \$3.6 million for the bond proceeds, the \$100,000 contingency that was in the budget but not used, and there were also some state grants that were only partially used.

Trustee Lopez said his recollection was that all Village employees received a cost of living increase in last year's budget. He said he has heard no discussion about how Village employees will be compensated next year.

MOTION: Trustee Homan moved approval of Resolution No. 2008-7-1. Trustee Lopez seconded the motion.

ROLL CALL VOTE: Trustee McDonough, yes; Trustee Homan, yes; Trustee Lopez, yes; Trustee Rael, yes. The motion carried unanimously, 4-0.

**C. DISCUSSION AND APPROVAL OF RESOLUTION NO. 2008-7-2
APPROVING THE 2009 FISCAL YEAR BUDGET**

Administrator Ward suggested the Board turn to Page 10 of 52 and he then discussed the total columns showing beginning cash balance of \$3,134,074, general fund revenues of \$2,833,106, total expenditures of \$2,561,127 and leaving positive cash of \$271,889. He said the capital expenditures reflect all the projects the Village anticipates taking on in the fiscal year for a total of \$1,637,716 to accomplish those projects. He said the general obligation bond of \$100,000 is to pay off that bond in the out years. He said the Village is saying it is going to spend \$1.4 million more than it takes in and therefore will dip into the reserves, leaving a cash balance of \$1.6 million. He said the big hits are going to be in the Fire Department with an increase of \$112,000 in general administration in order to get the fire fighters paid equally and they will hire one additional fire fighter. He said the overall increase in expenditures in the operating budget is 14%. He said they have included a 5% salary increase that will not be done as a cost of living increase but will be done by employee evaluations and appraisals with increases as warranted and a cap of 5%. He said he has not anticipated the salary increases being retroactive to July 1.

Trustee McDonough asked where the \$1.4 million from reserves was going to be spent.

Administrator Ward said the reserve would be spent on capital expenditures and on matching funds for projects with grants.

Trustee McDonough asked if it would be possible to approve the budget, but before the positions are filled that are funded in the budget, the Board receive a presentation concerning those positions. In addition, he said he would like an in-depth discussion on where they are going with the Fire Department, ISO Rating, equipment needs, building needs, etc.

Chief Perez said having the 4th person will give them the ability to run the rescue 24 hours and the engine 24 hours a day.

Administrator Ward said the \$125,000 is not about adding one person, it is about adding three people because eventually that is what they will have to pay for. He said the commitment from the Chief was that he and the Fire Marshal would absorb the impact rather than immediately asking for funding for three additional people. He then discussed the increase in budget over the prior year's budget.

MOTION: Trustee Lopez moved approval of the proposed budget, Resolution No. 2008-7-2. Trustee Rael seconded the motion.

Trustee Lopez said a year ago they talked about employee raises ahead of time. He said the Village is small and there are only a few employees. He said he believes they deserve a cost of living increase.

Mayor Abraham said their philosophy is that they need to do performance based increases rather than cost of living.

Trustee Lopez said he believes the Board would like to have been advised as to what those salary increase decisions were going to be.

AMENDED MOTION: Trustee McDonough suggested that the Board have the opportunity to approve filling of positions that are at this point unfilled but included in the budget.

Trustee McDonough's amended motion died for lack of a second.

Administrator Ward said the Village is committed to one additional position in this budget but the reality is that at some point you will have to pay for the other two persons. He said Chief Perez is giving the Board one year of commitment to use himself and the Fire Marshal as the other two persons.

Trustee Homan said from an operational standpoint, she believes the hiring of personnel is a day-to-day operational issue that the Mayor and Administrator should be in charge of. She said the Board is there to look at the budget and make sure it is appropriate for the Village.

Trustee McDonough suggested that they delay making the commitment to the Fire Department until they have the discussion. He said they will keep it in the budget, but hold back commitment until they have the discussion with the Fire Department and they are comfortable that they are ready to make the commitment.

MOTION: Trustee Lopez moved to approve the budget, but there will be no hiring of any Fire Department personnel until the Special Board Meeting is held on July 23, 2008. Trustee Rael seconded the motion.

ROLL CALL VOTE: Trustee McDonough, yes; Trustee Homan, yes; Trustee Lopez, yes; Trustee Rael, yes. The motion carried unanimously, 4-0.

6. PUBLIC HEARINGS AND APPLICATIONS

A. AN APPEAL BY MARK AND JUDY CARUSO TO THE BOARD OF TRUSTEES OF THE DENIAL OF THEIR REQUESTED EVENT PERMIT FOR FILMING IN THEIR HOME LOCATED AT 5001 RIO GRANDE LANE NW ON JULY 28, 2008 THROUGH AUGUST 1, 2008

Attorney King swore in those who would be speaking on Item 6.A.

Administrator Ward discussed his report and said his statement is that the application does not meet the requirements of Ordinance 166, Section 2B(4), as the length of the activity is too long. He said the Village has received a number of complaints from neighboring residents and the requirements of the Zoning Ordinance and Master Plan are relevant and must be factored in. He said since becoming Administrator, he handled one filming event at the Caruso home which was on October 24 and October 25, 2007. He said this event caused a number of complaints from neighbors regarding traffic, noise and disturbance of the neighbors' home activities. He said the proposed use is not allowed in the A-3 Zone as a permissive use, conditional use, nor as an accessory use. He said the proposed use is a prohibitive use as it is not classified as permissive or conditional within the A-3 Zone. He said on June 18th, Mrs. Caruso came into Village Hall and filled out an event permit for a filming event at her home on July 28 through August 1. He said on that date, June 18, he denied the permit.

Trustee Lopez asked if the applicant applied for a home occupation license in the year 2008.

Administrator Ward responded that they did not apply for a license.

Paul Melendres, Attorney for Mark and Judy Caruso, said they express their appreciation for the Board hearing this appeal. He said the first issue is the administration's justification for the denial of the permit; the second issue is that any resident should expect due process from a government entity; and the last issue is about the film industry and how it is important for New Mexico and the Village. He said the Caruso property is zoned A-3 and one of the permitted uses is a home occupancy which in 2007 they had to allow for the filming at their home. He said they see this as a permitted use under residential. He said they understood from Village administration that this was a commercial use which would not be properly zoned in this location. He said when you look at the definition of commercial activity in the Village ordinances, there is a large list of what is defined as a commercial activity and filming in your private home is not defined under the commercial activity. He also noted that the Caruso's had received their permits since 2005 and then at the end of June it was abruptly and unilaterally terminated by the administration and they believe this was a violation of due process. He said the Caruso's wanted him to talk about their willingness to work with the Board of Trustees and the administration to reach a happy compromise. He said the Caruso's have tried to minimize the problems associated with filming and have drafted a

contract with restrictions on the film company. He said they were hoping to go through the Planning & Zoning Commission to incorporate restrictions on the filming companies. He said they believe that filming in a private residence is no different than having a political fund raiser in a private home. He said in both cases they are using their private residence to generate income. He said they believe their appeal should be granted and there should be another process, if you have concerns, to modify the zoning that is already in place and allow the event to take place in August at the Caruso's home.

Wade Whitman, 1909 Apple Street, said he is the location manager for the film industry. He said he scouts, negotiates and contracts for locations for future films. He said the incentives of the State draw in a lot of films that would not necessarily come to New Mexico. He said when they film in Los Ranchos, they are using nearby hotels, restaurants, shopping, rentals, etc., that bring the revenue from filming to the community. He said they want to adapt to the issues that have been brought to the Board and reach a resolution that works for everyone.

Mayor Abraham asked how much a resident is paid and how many crew members and staff are necessary to support the movie.

Wade Whitman said for a large home or mansion, they would normally pay between \$3,000-\$5,000 a day. As far as number of crew members, he said it all depends on the size of the show and the budget.

Don Hedges, 5200 Los Poblanos Lane, said he has been aware of the filming for the last year or two since he lives just down the street from the Caruso's. He said the residents in his neighborhood are not happy with the noise, traffic control and lack of traffic control and a number of issues. He said the neighborhood respectfully disagrees with the Caruso's having shown concern for their neighbors in bringing Hollywood to the Village. He said they have prepared a petition that was signed by all but two of the neighbors which means they have 28 signatures opposing the ongoing operation. He then read the petition into the record. He said he would ask the Mayor and Trustees to stick by their guns on this and that the commercialization be taken out of the neighborhood and given back to California.

J. T. Michelson, 5001 Rio Grande Blvd., said he would like to speak in support of the Village decision to not allow commercial zoning. He said Los Poblanos Estates has covenants that prohibit commercial use of the land.

Dennis Carpenter, 4701 Rio Grande Lane, said his wife walks in the neighborhood with their two labs and when the Caruso's were filming, she was stopped and asked to turn around and go back the way she came because it would disturb the filming. He said they do not want any lawsuits, but they would like to have their neighborhood back.

Robert Davis, 4600 Rio Grande Lane, said he would like to add that the speeding of these non-residents in the shuttles is a hazard to adults as well as children.

Rebuttal

Attorney Melendres said they understand the neighbors have had concerns but the reality is whether the Board has the legal authority to prevent a private property right which has been in place. He said they were given the authority to have filming and he believes it is permissible under the zoning. He said the question is whether or not the method that they are before the Board is appropriate and he does not believe the Board has the authority to deny the Caruso's something that they have been doing in the past. Instead, he said he believes the Board should grant the appeal, allow the Caruso's to continue to film, and then request the Mayor have Planning & Zoning create a commission, change the ordinances and try to address the concerns of the neighbors by placing restrictions on the filming.

Wade Whitman said generally they would spell out to the city what traffic controls, etc., they want and then the city has the opportunity to say what they can or cannot do.

Trustee McDonough said there was a long list of commercial activities in the Zone Code and it was suggested that what is not included in that list is a permissive use in residential areas. He asked Attorney King for clarification.

Attorney King responded that it would be for the Board to decide. However, she said the section Mr. Melendres was referring to was an excerpt of the C-1 Zone. She said her reading of that is that there are permissive uses in the A-1 Zone and those are the same uses that are allowed in the A-3 Zone and if it is not listed in the permissive uses, then it is actually a prohibitive use, according to the ordinances.

Trustee McDonough asked why, if Mr. Melendres felt the hearing should have been before the Planning & Zoning Commission, he did not appeal it to them instead of the Board.

Attorney Melendres said he was surprised when it was placed with the Board. He said he believes it should have been granted and then what needed to be done on the administration's behalf was to take it to Planning & Zoning if they were going to make changes.

Mayor Abraham said he believes the Village must protect the integrity of the ordinances it has on the books. He said you can't make the leap that it is permitted because we have home occupancy when in fact the definition of home occupancy does not apply here and the due process is that they need to protect the integrity of the Zoning Ordinances and the neighborhoods.

Trustee Comments

Trustee Rael said he does not see any way that this is not a commercial enterprise. He said there is money being paid so that is commerce as far as he is concerned.

Trustee Lopez said he agrees that it is commercial; however, somehow the Village must find a way to protect the ordinances and establish a process.

Trustee Homan said because of the growing film industry and the desirable location that Los Ranchos has that at the very least they should look into some kind of ordinance around this specific topic. She also indicated that if the Village did enact some strict permitting, then there should be some gross receipts or some type of benefit to the Village overall.

Trustee McDonough said we are a quiet, desirable, rural and residential community. He said it is not the Village's incentive for the filming industry; it is Governor Richardson and the State of New Mexico.

MOTION: Trustee McDonough moved to deny the appeal and uphold the administration's denial of the Caruso's event noise permit with the following findings: 1) The property is located at 5001 Rio Grande Lane NW, Los Ranchos; 2) the property is zoned A-3; 3) the property is in the south Rio Grande Character Area B; 4) the property is in the Rio Grande corridor; 5) the proposed uses are for filming at the property from July 28, 2008 to August 1, 2008 from 6:30 a.m. to 10:00 p.m.; 6) the application does not meet the requirements of Ordinance 166, Section 2B(4) as it is too close to other residences and complaints have been received from those residents; 7) the length of the proposed activity is too long; 8) the requirements of the Zoning Ordinances and Master Plan are relevant and must be factored in; 9) the proposed use is not allowed in the A-3 Zone as a permissive use, conditional use or as an accessory use; 10) the proposed use is a prohibitive use as it is not classified as permissive or conditional use within Zone A-3; 11) applicant's reference of Section 266 of the Zoning Ordinances are inapplicable to this appeal because Ordinance 166 governs; 12) garage sales, as referenced in the appeal, are distinguishable from the proposed use because garage sales are permissive uses in the A-3 Zone; 13) home-based internet sales businesses are distinguishable from the proposed use because those businesses can be permitted as home occupations in the A-3 Zone; 14) the applicant did not request a Home Occupation permit for 2008 and needs to do so if that is what the applicant is attempting to secure; 15) the applicant did not request a Special Use Home Occupation Business License and no such zoning category or permit exists; 16) Section 1.3 of the 2010 Master Plan provides that the goal is to maintain residential development in keeping with the rural and diverse character of the Village; and 17) Section 4.1.2.1 of the 2010 Master Plan recommends minimizing noise and light pollution. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously, 4-0.

7. OLD BUSINESS

A. DISCUSSION AND APPROVAL TO ADOPT AN ORDINANCE AMENDING ORDINANCE NO. 173 OF THE ANIMAL WELFARE ORDINANCE, SECTION 6. LICENSING AND VACCINATION REQUIREMENTS FOR DOGS AND CATS, SECTION 10, SPECIALLY PERMITTED ACTIVITIES INVOLVING ANIMALS, (A)(5), SECTION 11, (D), PROVISIONS RELATING TO LIVESTOCK AND ADDING A NEW SUBSECTION (D, E and G) TO SECTION 11. THIS ITEM WAS DEFERRED FROM THE JUNE 18, 2008 BOARD MEETING.

Administrator Ward said they have asked for a deferral because they are not prepared to go forward at this time.

MOTION: Trustee Homan moved to defer the Animal Ordinance item until the September 10, 2008 Board meeting. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously, 4-0.

8. NEW BUSINESS

A. DISCUSSION AND APPROVAL TO ADOPT AN ORDINANCE ANNEXING TERRITORY INTO THE VILLAGE OF LOS RANCHOS. THE PROPERTY IS LOCATED AT 8409 2ND ST NW AND LEGALLY DESCRIBED AS A CERTAIN TRACT OF LAND SITUATED IN ALAMEDA, WITHIN SECTION 16, T11N, R3E, N.M.P.M. BERNALILLO COUNTY, NEW MEXICO, BEING KNOWN AS TRACT 149-B, AND A PORTION OF TRACT 146-A2, M.R.G.C.D MAP 24, CONTAINING 1.5756 ACRES MORE OR LESS. THIS ORDINANCE REPEALS ORDINANCE NO. 214

Planner Seebach said Ordinance 214 was adopted on February 13, 2008 to annex the land that was part of M Squared Builders' subdivision and there was an error in the acreage. She said the acreage was listed as 1.31 acres when, in fact, it was 1.5756 acres and in order to correct that it was necessary to repeal Ordinance 214 and adopt Ordinance 220.

MOTION: Trustee Homan moved approval of Ordinance No. 220 as currently presented which will be replacing Ordinance No. 214. Trustee Rael seconded the motion.

ROLL CALL VOTE: Trustee McDonough, yes; Trustee Homan, yes; Trustee Lopez, yes; Trustee Rael, yes. The motion carried unanimously, 4-0.

B. DISCUSSION AND APPROVAL OF THE VOTING DELEGATE AND ALTERNATE FOR THE NEW MEXICO MUNICIPAL LEAGUE ANNUAL CONFERENCE IN CLOVIS, NM

MOTION: Trustee Lopez moved approval of Trustee Homan as the voting delegate and Trustee Rael as the alternate. Trustee McDonough seconded the motion.

VOTE: The motion carried unanimously, 4-0

C. DISCUSSION AND APPROVAL TO ENTER INTO AN AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE 2008/2009 COOPERATIVE AGREEMENT (SP-3-09(926); CONTROL # M300032; FOR IMPROVEMENTS INCLUDING SUBGRADE, PMBP AND MISC. CONSTRUCTION TO GREEN VALLEY AND RANCHITOS ROAD; AND AUTHORIZATION FOR THE MAYOR TO SIGN THE AGREEMENT

MOTION: Trustee Lopez moved approval to enter into an Agreement with NMDOT. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously, 4-0.

D. DISCUSSION AND APPROVAL TO AUTHORIZE THE MAYOR TO NEGOTIATE AND ENTER INTO AN AGREEMENT FOR THE PURCHASE OF THE RICHARD GALLEGOS PROPERTY WITHIN THE VILLAGE CENTER PROJECT AREA

Mayor Abraham said this purchase agreement will be contingent upon the Board ratifying it and also the purchase price being at or below appraisal. He also noted that the offer would be structured in such a manner that there would be no financial detriment to the Village should the Board decline the offer.

MOTION: Trustee Homan moved approval to authorize the Mayor to negotiate and enter into an agreement for the purchase of the Richard Gallegos property. Trustee Rael seconded the motion.

VOTE: The motion carried unanimously, 4-0.

9. TRUSTEES INFORMAL DISCUSSION

Trustee Rael said Roger Erker from JB's has not received his final survey based on the new boundaries after the property was sold to the Village and there was an agreement on the easement. He said the sidewalk in front of his house is buckling up. He said there was a fire behind his house because of the garbage and trash along the property line. He said he also believes there needs to be a moratorium on building in the VC Zone and a moratorium on annexations to the Village until we have squared off our boundaries.

Trustee Lopez said he heard that the U.S. Attorney put the abandoned house on Ranchitos up for auction.

Trustee McDonough asked why there was a road closed sign at El Pueblo and Guadalupe Trail.

Administrator Ward said the residents along Guadalupe Trail complained about the traffic due to the Rio Grande Blvd. closure and so the sign was erected to deter commuters.

Trustee Homan noted that all the Trustees will be at the Municipal League conference the week of August 10. It was agreed that the Board meeting scheduled for August 13 should be moved to Wednesday, August 27, 2008.

Administrator Ward asked for Board direction concerning the special meeting on July 23 and what should be included on the agenda. The Board directed him to limit the agenda to just the budget for the Fire Department.

10. ADJOURNMENT

Mayor Abraham adjourned the meeting at 9:50 p.m.

APPROVED by the Board of Trustees of the Village of Los Ranchos de Albuquerque
this _____ day of _____, 2008.

ATTEST:

Annabelle Silvas
Village Clerk