

MINUTES
VILLAGE OF LOS RANCHOS DE ALBUQUERQUE
6718 RIO GRANDE BOULEVARD NW
BOARD OF TRUSTEES REGULAR MEETING - 7:00 P.M.
May 14, 2003

Present:

John Hooker, Mayor
Penny Rembe, Trustee/Mayor Pro Tem
David Siegel, Trustee
Don Lopez, Trustee
Pablo Rael, Trustee

Hank Rosoff, Administrator
Allen Leatherwood, Treasurer
Annabelle Silvas, Clerk
Cyndie Tidwell, Planner
David Mathews, Attorney

1. CALL TO ORDER

The Village of Los Ranchos Governing Body held a Regular Meeting on Wednesday, May 14, 2003 in the Warren J. Gray Hall. The meeting was called to order at 7:05 p.m.

A. Approval of the Agenda.

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

VOTE: The motion carried unanimously.

2. PUBLIC COMMENT PERIOD

Gilbert Benavidez reported on the New Mexico Main Street and explained the handouts he handed out.

Eileen Harrison said she was collecting historical data from the Village of Los Ranchos. The purpose of this is to collect and preserve the histories of the original families of the Village and the topographical area of the Village prior to the incorporation of the Village of Los Ranchos to use in promoting the Village through advertising, chambers of commerce, tourism bureaus and other appropriate means to build the Village business district and provide an attractive friendly atmosphere for Village residents and for those visiting our Village.

3. CONSENT AGENDA

A: Approval of the Minutes - Regular Meeting April 23, 2003.

MOTION: Trustee Lopez moved approval of the minutes.
Trustee Rembe seconded the motion.

Trustee Siegel stated that on Page 2, Line 43, after the word *rent*, it should say "*guest houses*" to maintain the thread of the discussion.

Trustee Rembe stated that on Page 2, on the agenda, under B where it said "conditional of approval" it should be conditional approval.

VOTE: The motion carried unanimously.

4. PUBLIC HEARINGS AND APPLICATIONS

A. A request by Phyllis Taylor of Sites Southwest, LLC for a Zone Map Amendment to allow for VC (Village Center) Zoning where the parcels are currently zoned SU-1, C-1 and R-3 for Michael Contreras (Agent) of Retail One, LLC for property owners of some 23 parcels located at the southeast corner of 4th Street and Osuna Boulevard. The following application has been submitted in regards to the parcels legally known as: Lot 11-A, Lot 12, Lot 13, Lot 14, Lot 15, Lot 16 Osuna Addition; Tract 43A-1, Tract 43B, Tract 43C, Tract 43D, Tract 43E, Tract 58B, Tract 59A-2, Tract 59B-2, Tract 59B-1-B-1, Tract 59B-1-B-2, Tract 59C-1, Tract 59C-2, Tract 59D-1, Tract 59D-2, Tract 59E-1, Tract 59E-2, Map 29, Division of Lot 1, Land of Robert Cooper. These parcels contain approximately 8.8 acres, more or less. This application was heard by the Planning and Zoning Commission at their Regular Meeting held on April 22, 2003 and forwarded to the Board of Trustees with a recommendation of approval.

Trustee Rael recused himself for this discussion.

Attorney Mathews swore in the people who were present to speak on the Contreras matter.

Planner Tidwell presented her report detailing what the Planning & Zoning Commission heard on this matter at the April 22, 2003 meeting. She stated that the recommendation of the P&Z Commissioners to change the zoning to VC Zone was unanimous.

Trustee Lopez said he supported the Zone Map Amendment but had a question about subdivision. He asked if a minor subdivision only required department approval.

Planner Tidwell said that was correct and explained the process of minor subdivisions.

Trustee Siegel said he supports the zone change, but has a few questions about the variance requests, specifically the decrease in the public space and the housing issues. He said if all that is being heard tonight is the zone change he won't have a problem with that.

Carlos Osuna said that he represents the Osuna family and that they have asked the Zoning Commission and the Charette hearings that the north side has not been considered in this development. He said if the south side gets developed the north side will suffer. He further stated that he is the grantor of the deed restrictions for the Osuna Addition #1, which includes lots 3, 4, 5, 6, 7, 8 on the north side 12, 13, 14, 15 and 16 on the south side. 3 & 4 is a restriction to commercial use as a day care center. Lot 12 is commercial use as a winery or other place of business provided it is not a nuisance to the neighborhood. Lots 5, 6, 7, 8, 13, 14, 15 and

16 are R3. He further stated that as far as he is concerned they will remain intact until the north side is taken care of, and you people can come up with a plan of what is going to be done with Osuna Road.

Trustee Siegel asked Attorney Mathews what the legal implications were of the deed restrictions.

Attorney Mathews said he wasn't aware about this; it was the first time that he'd heard about some of these. A deed restriction is different than a restrictive covenant. The law considers it to be a deed with conditions that limits the uses. If they've been violated then the deed restriction goes away. If they haven't been violated then they are still in place and they have to be removed by the grantor's permission. I haven't heard about this in advance, I'd seen only one deed restriction. He said he is not sure if it's on the same lots that restricted one lot to residential use. If these deeds are part of the development that is certainly something that will have to be dealt with.

Trustee Lopez asked Attorney Mathews if he was aware of any restrictions in the Zone Map Amendment from the evaluation that was done.

Attorney Mathews said he was not aware of any restrictions.

Walter Darr said it was his understanding that when the concept was brought up before, on the Village Master Plan, that this was going to be a comprehensive Master Plan. It seems to be unfolding into self-serving, individual parcels here. He can not see how you can go ahead and have a zone change to allow development on one side of the street and blatantly ignore what will happen to the other side. He is concerned because he has property across the street that will be affected by traffic. He feels that both sides of the street should be included in the plans.

Trustee Siegel asked about a traffic impact study done. He said the intersection now has more capacity than it ever did.

Trustee Lopez said that the new engineer will have to deal with all these issues.

Trustee Rembe asked if Mr. Darr's land fell into the Village Center Zone area.

Phyllis Taylor said that in the 4th Street Corridor design workshop results, the Master Plan and the VC Zone set guidelines for how the Village Center should be accomplished. Presumably that will be accomplished in the end by multiple property owners within the boundaries within the area defined by the potential Village Center Zone. She said Retail One has met with neighbors to try and resolve issues of traffic, pedestrian circulation, how we handle the plaza space, setbacks, parking, architectural design, landscaping, and all the features of the site plan.

Trustee Siegel asked if the north side neighbors concerns came up at the meeting of Sites Southwest and the neighbors.

Phyllis Taylor said it has been discussed, with the Planning and Zoning Commission and it has been brought up before. Her understanding is that the deed restrictions are among the property owners within the subdivision where the deed restrictions apply.

Trustee Rembe asked if something could be done with a lot that size of Mr. Darr's.

Phyllis Taylor stated that you could probably do something with two housing units, but it is not a very big parcel.

Trustee Siegel stated that another option that they mentioned was that they were not able to accommodate the area requirements for a plaza, there is an offer even of cash or other land acquisition in lieu of that. This could be an opportunity for you to make good on that and take care of the concerns of people on the north side of the street.

Mike Contreras stated that he would be happy to buy Mr. Darr and Mr. Osuna's property. If the project gets through he would be happy to buy them. Offers have been made to them, but it has to be based upon approval of the site plan.

Carlos Osuna stated that Retail One, and him had a purchase agreement in 1996, after the original zone change request was denied it was defaulted. There has been no further negotiation since then. He wants compensation at a fair market price.

Trustee Rembe stated that this is something that is good for the Village, and we wouldn't want you to lose money on your land. She wouldn't want to put the burden on one developer.

Trustee Siegel stated that the people that live on the north side of Osuna have a point, and ~~she~~ he thinks that it's incumbent on the developer to make those people happy. We are granting quite a bit of zoning change and the value of that land is going up quite a bit because of this change. In exchange, I think it's not unreasonable to ask and ~~he's~~ Mr. Contreras demonstrated a willingness to deal with the ramifications of this development on the north side of the street.

MOTION: Trustee Siegel moved approval of the request. **Trustee Rembe** seconded the motion.

VOTE: 3 - 0; Lopez - aye, Siegel - aye, Rembe - aye (Trustee Rael was recused)

The Zone Map change is approved as proposed.

B. A request by Tom Montoya for an Appeal of the Approval of a request by Monica Patterson to allow for a Home Occupation Permit to treat patients with acupuncture, herbs, and massage in the Casita next to the residence. The property is located at 8124 Guadalupe Trail NW, Los Ranchos de Albuquerque. The Planning and Zoning Commission approved the request with conditional approval at their Regular Meeting held on March 25, 2003. The appeal is to be heard by the Board of Trustees.

Attorney Mathews swore in all the people that were to testify.

Tom Montoya stated that he is opposing this and ~~feels~~ feels that the P&Z approval was in error. He said that the matter should have been deferred because all the preconditions for the Home Occupation should be in order and Ms. Patterson has not yet obtained her license required by the state. He said Ms. Patterson did not approach the Montoya's with a request to obtain access to the house for business customers. The final reason is that he believes the commission failed to apply the ordinance. The ordinance has to be applied as it reads, not as how you think it reads. He further stated that he wanted to point out that we thought we had forged a compromise that this would be limited to a two year period and that wasn't included in the conditions of approval.

Attorney Mathews asked Mr. Montoya about the map that shows the easements.

Trustee Rembe said somehow this does not make any sense.

Trustee Rael said that if the two parties agree to a compromise then we shouldn't be arguing anymore.

Trustee Lopez said in the past the applicant and the opposition would be asked to mediate.

William Kramer said he was a land use consultant and was representing the applicants. He said some of the points that were made by Mr. Montoya were erroneous. He said the actual physical road is only 15 to 17 feet wide, there may be a 25-foot easement but there is not 25 feet of graded roadway. The assertion that somehow the little pieces of the plats they have shown you and the notice of restrictive covenants limits the use of that to only the owners of this property and only residential purposes, there is nothing in here that specifically limits business invitees from the use of that road. It is a private easement and just as the people who will come to this property for private purposes or business purposes can use that road under this easement under my interpretation, it's not as clear cut as Mr. Montoya would have you believe. The only other point he would like to make is Mr. Montoya said that the decision was in clear violation of the ordinance and that is not true. He said the Home Occupations are normal incidental uses to the primary use of a property as a residence.

Monica Patterson said that she was not aware of the restrictive covenants. When she read through the covenants, she didn't see anything about businesses. She said she did pass her State Board and is awaiting the arrival of her license. She didn't really know that the Montoya's owned an additional ten feet of the road. She said that she didn't agree to a two year compromise, but that she was willing to discuss it.

Planner Tidwell said the motion to approve as stated by Commissioner Fellows, did include the condition that the numbers of patients seen are to be limited to four per business day.

Trustee Lopez said he wanted to offer a perspective, having been on the Board since 1992. He said they have never had an appeal before the person ever got started. He said the complaints always came a couple months after the business and daily routines got started. He said he feels that if the Montoyas have agreed to a two-year limit, they seem to be saying that for two years they are willing to let this place operate.

Trustee Siegel said he agreed with Trustee Lopez. He also questioned the potential impact of traffic on the road. It is much better to work this out ahead of time than risk neighbors being upset to the point that you leave town, as did the dog trainer. He said he agreed that a two-year limit is a reasonable compromise for this.

MOTION: Trustee Siegel made a motion to add the condition of a two-year limit, subject to yearly review. **Trustee Rael** seconded the motion..

Attorney Mathews stated that you can not deny a person from re-applying on a yearly basis. This motion tonight doesn't mean that Ms. Patterson's business goes away in two years; it means that you are going to review it in two years. It would have to be brought back in two-years in a new application.

Wolfgang Rempen said that it seems like Monica is getting slammed, because when you start a new business based on four customers a day it's a difficult prospect for making money and creating a business for the future that's viable. The decision was made by the commissioners to limit it to four people a day instead of limiting it to two years, because it would keep the traffic down. Now you are going to limit it to two-years. He asked if the Board would consider lifting the four patient restrictions.

Tom Montoya said that Ms. Patterson said in her testimony to the Commission that "it's a good practice if you have twenty to thirty people that you can treat in a week. I'm happy with a small number of 15." She was approved for 20. If this was based upon a compromise, it shouldn't unravel. They understood that it would be a two-year use and then it wouldn't be used again.

Ruth Montoya said that she would agree to the four patients per day. She said lifting the four patient limitation is a bad idea, and it would make too much traffic.

Trustee Rembe said if she could have six patients a day, you have to give her some incentive to succeed. It's going to take her a while to get four patients a day. If she can get up to six patients a day then she'll need a bigger place.

Trustee Lopez said that if the Montoya's would allow six per day and if in fact Monica agrees to leave in two-years that are the essence of compromise. I'm not sure they are all ready to agree to that compromise.

David Montoya said that when a commission decides to allow extra uses on a property that the private road should be considered. This road was built by them and already has a lot of money invested.

Mayor Hooker asked if there were a new agreement that the easement on your side was reduced back to 10 feet on the remainder of the Rempens property, would that please you or help you in these considerations.

David Montoya said that would make it tougher. He said the Rempen's land was about an acre or a little less and was inclusive of their portion of the road.

VOTE: Motion carried 2 - 1, with **Trustee Rembe** voting no and **Trustee Lopez** abstaining.

Trustee Rembe said the reason why she voted against this was that she thought that there was a problem with the Home Occupations and she doesn't think the ordinance was followed.

5. Old Business

A. Discussion and Approval of an Ordinance Amending Chapter 3 of the Codified Ordinance -- Animal Welfare Ordinance.

Administrator Rosoff stated that this ordinance was advertised as we have it here and the only change since the last time it was before the Board was the addition of some wording on the leash law.

MOTION: Trustee Siegel moved to approve the ordinance **Trustee Rembe** seconded the motion.

John Johnston asked if private horse owners would have the right to buy or sell a horse as long as it wasn't commercial activity. He said another issue is a liability issue under the guard dog section. He asked why there would be an additional permit required for someone that goes to the expense to train an animal for protection.

Trustee Siegel said that the intent was to assure that the animal was professionally trained.

Attorney Mathews said that the guard dogs at businesses were the ones that the ordinance was talking about, not a dog you might have at home.

Dennis McCary said in Section 12-A under penalty assessment, misdemeanor there's a provision for levying a fine. He asked what if someone refuses to submit the waste management drainage, dust and vermin mitigation plans. He asked if you have any ability to seek judicial relief on that.

Attorney Mathews said it would be a violation of the ordinance.

There was a discussion on who could file a complaint in court.

VOTE: Lopez - aye, Siegel - aye, Rembe - aye, Rael - aye.
The motion carried unanimously.

B. Discussion and Approval of an Ordinance Amending the Business Registration Ordinance.

Administrator Rosoff explained the changes to the ordinance.

MOTION: Trustee Lopez moved to approve the ordinance.
Trustee Siegel seconded the motion.

VOTE: Lopez - aye, Siegel – aye; Rembe – aye; Rael - aye.
The motion carried unanimously.

C. Discussion and Approval of an Ordinance of Vehicles Abandoned of Displayed for Sale Illegally.

Administrator Rosoff explained the change to the ordinance.

MOTION: Trustee Rembe moved approval of the ordinance.
Trustee Rael seconded the motion.

VOTE: Lopez - aye, Siegel - aye, Rembe - aye, Rael - aye.
The motion carried unanimously.

6. NEW BUSINESS

A. Discussion and Approval to Advertise an Ordinance Amending Chapter 20, Section 2 of the Codified Ordinance - Penalties for Violation of Ordinances.

Administrator Rosoff state that he wanted to point out for Mr. McCary's benefit in Section 1 of this ordinance, which is not subject to change, and is already an ordinance of the Village, that any violations may be prosecuted in Village Municipal Court or in any other court of competent jurisdiction.

MOTION: Trustee Siegel moved to advertise the ordinance in summary.
Trustee Lopez seconded the motion.

VOTE: The motion carried unanimously.

7. FINANCIAL BUSINESS

- A. Cash Report -- February 2003**
- B. Cash Report -- March 2003**

Treasurer Leatherwood reported on the cash reports for Feb. and March and presented a corrected copy.

MOTION: Trustee Siegel moved to approve the February cash report.
Trustee Lopez. seconded the motion.

VOTE: The motion carried unanimously.

MOTION: Trustee Lopez moved to approve the March cash report.
Trustee Rael seconded the motion.

VOTE: The motion carried unanimously.

C. 3rd Quarterly Report

Treasurer Leatherwood stated that the 3rd Quarter Report is a re-cap.

MOTION: Trustee Rembe moved to approve the quarterly report.
Trustee Rael seconded the motion.

VOTE: The motion carried unanimously.

8. REPORTS

A. Mayor's Report

Mayor Hooker reported that Seth Harry spoke in place of Bob Gibbs last week. He said the Spring Fest was the best turnout ever. He said that Chris Vogel the Journalist for the Village has been re-assigned. He said there are going to be fireworks on the ~~3, 4 and 5~~ 3rd, 4th and 5th of July and the City is having their show at the balloon park this year.

Trustee Rael said he didn't like Seth Harry's presentation, because he felt he was making excuses and was not specific to the Village.

B. Administrator's Report

Administrator Rosoff reported that the requests for proposals on the continuation of the 4th Street design were issued, and received two proposals from Wilson & Co. and Larkin. He said the selection committee has recommended Larkin. He said there is also an RFP out for auditor services. He further reported that Invoices have been sent out for false alarms for \$800.00. The Board received a letter from J.T. Michaelson, and some of the things he had to say were way too specific, but some had some merit. He said the language in the Zoning Ordinance on traffic as it relates to Home Occupations is exactly the same as what's in our current ordinance, so if you have other language you want to propose we should be thinking about getting that in there before it's adopted.

C. Legal Report

Attorney Mathews said that Daniel Brummel's property had been inspected and found several code violations. He said J & J Mobile Home Park is being cleaned up and the sale should close soon.

Mayor Hooker asked about the conditions of approval of IC Mart's liquor license.

D. Planner's Report

Planner Tidwell said that Jessica Wilkins passed the Flood Plain Manager's exam. She said that Jessica, Keith and she attended the New Mexico Municipal League of Zoning Officials conference and four of the commissioners attended as well. She said the Horizon Academy doesn't have a final grading and drainage plan. The traffic impact analysis will affect this some, so some minor changes will have to be made. A development agreement and bond is needed in order to expedite things. Tidwell said she has stamped and signed the construction plans and they are ready to be submitted to Bernalillo County. A letter will be submitted to Toby Perea at Bernalillo County to let him know that he can go ahead with the review on the plans.

Mr. Saylor stated all the difficulties he had with Karen Jacobsen and all the problems she created with not communicating.

E. Fire Department Report

Administrator Rosoff said that one firefighter is on extended light duty and they are considering replacing his time.

F. Engineer's Report

None

9. Trustees Informal Discussion

Trustee Lopez reported on and presented a survey that he needs back by May 30, 2003.

Mayor Hooker said that Mike Contreras is being heard by the P&Z Commission on May 27, and have asked that the Board to hear the case on June 11, 2003.

Trustee Siegel asked if they ever gave a reason why it was important to be heard at an earlier date than scheduled.

Planner Tidwell said that if Contreras got all approvals in June, he will be ready to go and he would like to see the project proceed before any complications begin.

Trustee Lopez said that he didn't see any problem with this June 11th meeting.

Trustee Rembe reported on all the events held at her house.

10. Adjournment

MOTION: Trustee Lopez moved to adjourn the meeting at 11:05 p.m. Trustee Rembe seconded the motion.

VOTE: The motioned carried unanimously.

APPROVED by the Board of Trustees of the Village of Los Ranchos de Albuquerque this ____ day of _____ 2003.

ATTEST:

Annabelle Silvas, CMC
Village Clerk