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**MINUTES OF A REGULAR MEETING
OF THE GOVERNING BODY OF THE TOWN OF BERNALILLO
HELD AT THE TOWN HALL
August 24, 2009**

10 The Governing Body of the Town of Bernalillo met in a regular session within the law and rules
11 of the Town on August 24, 2009, at 6:30 P.M.

12 Upon Roll call the following members were found to be present:

13 **PRESENT:**

14 Mayor Chávez
15 Councilor Montoya
16 Councilor Jaramillo
17 Councilor Torres

18 **ALSO PRESENT:**

19 George Perez Ron Bohannon
20 Denise Silva Bill Carpenter
21 Santiago Chavez Mike Moloney
22 Mary Kwapick Mary Jo Moloney
23 Fred Radosevich Maria Rinaldi
24 Ken Kwapick Mary Kay Gonzales
25 Steve Amiot Margie Amiot
26 George Perez Rosalie M. Dome
27 Carlos Madrid Vangie Madrid
28 Joseph Ferro Troy Martinez
29 Eric Schoen Alonzo Lucero
30 Cippy Montoya David Soule
31 Margaret Gellar

32 **ABSENT:**

33 Councilor Sisneros

34 **Others Present Not Identified**

35 **APPROVAL OF AGENDA: 4a)**

36 Councilor Montoya asked to add under Miscellaneous discussion an update on the Wine Festival
37 hires and the status of the hiring or an actual interim Town Manager.

38 Councilor Torres moved to approve the agenda as amended with the added Miscellaneous Items
39 to the agenda for discussion only. The motion was seconded by Councilor Jaramillo and the
40 motion carried unanimously.

41 **PUBLIC HEARING: 5a)Discussion, Consideration and Action on Appeal of P & Z**
42 **Commission Decision: Piedra Lisa Development. Presenter: David Soule, Agent for Olive**
43 **Drab LLC**

44 David Soule, Agent for Olive Drab, LLC stated the appeal from the Planning and Zoning
45 Commission's refusal to approve and therefore denial of a plat that is incidental to a zone change
46 previously approved by the town council on the same property. As the applicant understood the
Commission, the Commission felt that since the Town Council did not accept Planning
commission's rejection of the previous zone change request, the Council should be the one to
approve the plat. The Plat that has been submitted lays out the lots, roads, zoning and other

Minutes of the Town Council Meeting

August 24, 2009

Page 2

47 items in a way that coincides with the zone change previously approved by the council, which
48 has been upheld on appeal to the District Court and a rehearing has been denied.

49

50 There were technical issues at the Planning and Zoning Commission's meeting, some of the
51 items are not included in the plat. All the information is included in a document with five
52 documents for the viewing of the Town Council. The drawing show drainage, roads and width
53 of roads.

54

55 Councilor Torres asked if the Planning and Zoning Commission had view the drawing.

56

57 David Soule stated no.

58

59 Santiago Chavez read his administrative review with items that were not addressed on the pre
60 plat presented to the Planning and Zoning Commission.

61

62 David Soule, stated that he had documents to revise the items in question. He handed them out
63 to the Town Council. He went over all five documents. Relating to drainage, layout of area,
64 cross section of the streets, width of streets, elevation, proposed lot lines, easements and
65 dedication of right of ways, grading plan, soil analysis, and schedule of the development. David
66 Soule, stated that the requirements have been met and urge the approval of the Town Council.

67

68 Margaret Gellar stated she was against the development and hopes that the Town Council
69 upholds the Planning and Zoning. Margaret Gellar stated David Soule stated that he was
70 ignorant of what needed to be done on a plat is just an excuse. Ignorance of the law is not an
71 excuse he should have had what he needed when he presented the plat. The Planning and Zoning
72 Commission did the right thing.

73

74 Rosalie Dome stated that she is on the south side of this property. Total disapproval, too many
75 homes for the size of the lot, the street width and elevations are not acceptable. She is not
76 against building, but loves the concept of a small town. The condos are not reasonably priced.

77

78 Denise Silva, stated that she is against and concerned about the schools and the roads planned to
79 go through private property and the congestion and what it will do the schools and the children
80 walking in the area.

81

82 Margie Amiot, stated that she is against the development. The information given to the P & Z
83 was not what you are being given on the appeal, the public was not allowed to see the
84 information.

85

86 Steve Amiot stated that he is opposed of the appeal. The information given tonight was not
87 viewed by the P & Z and never ruled on the master plan. This information should be given to the
88 Planning and Zoning Commission when the developer applies for approval of the pre plat

Minutes of the Town Council Meeting

August 24, 2009

Page 3

89 approval. Staff notes and recommendation is to sway your opinion for approval for the developer.
90 Urges the council not to approve the pre-plat.

91
92 Mike Moloney, stated he was against the appeal. In the Towns ordinances it states the pre-plat
93 should be advertised and the public be given the opportunity to comment. The item should go
94 back to the Planning and Zoning Commission.

95
96 William Sapien, stated if there is any doubt, then you should come down on the side of caution.

97
98 Carlos Madrid, stated that he is against the appeal. He feels the Planning and Zoning
99 Commission needs to review the pre plat.

100
101 Vangie Madrid, stated the she is against the appeal. She is opposed to the development. Her
102 father owned the property. Her brother sold the property without her knowledge and she would
103 have stopped it if she knew. The congestion would be bad. Too many homes for 4 acres.

104
105 Paul Carpenter stated he is for the development.

106
107 Eric Schoen stated he is for the development.

108
109 Mayor Chávez asked if Santiago Chavez had any comments.

110
111 Santiago Chavez stated that the public approval and process should be clarified by the Town
112 Attorney.

113
114 Mayor Chávez asked since the items have been brought to the Town Council in the past do the
115 items presented this evening constitute a new pre-plat.

116
117 George Perez Town Attorney stated that technically yes. The council can take anything viewed
118 today and make a decision. If the pre-plat meets our ordinance then it should be approved this
119 evening.

120
121 Mayor Chávez asked if the pre plat can be approved with conditions.

122
123 George Perez stated yes.

124
125 Councilor Montoya asked should this be given to Planning and Zoning Commission.

126
127 George Perez stated it would have been nice. The bottom line is if the plat presented to you this
128 evening meets all the requirements you may approve it.

129
130 Councilor Jaramillo asked if Councilor Montoya felt the condition of Ordinance #242 were met.

131

132 Councilor Montoya stated yes, his questions were met. He also stated that he believes in open
133 space because he is a rancher. This is about providing a development in this town to provide
134 housing for teachers or young couples that will send their children to the elementary school there.
135 It is about the future. The Bernalillo we know of the 50's are gone.

136
137 Councilor Jaramillo stated as long as we continue to allow special use we will have dense
138 development. 32 units are too much for that area. Planning and Zoning was not given the proper
139 documentation and would like to see this go back to Planning and Zoning.

140
141 Councilor Torres stated that we should have smart growth as long as the developer follows our
142 ordinances. The item should go back to the Planning and Zoning Commission for approval.

143
144 Councilor Jaramillo made a motion to revert the pre plat back to the Planning and Zoning
145 Commission.

146
147 Mayor Chávez reminded the Council it came back to the Governing Body because the Governing
148 Body made the decision for the approval of Special Use for the property.

149
150 Councilor Torres seconded the motion.

151
152 Councilor Montoya stated that he is against the motion. The developer has met all the concerns
153 on the pre plat.

154
155 Councilor Jaramillo stated that the Planning and Zoning felt they had to approve it.

156
157 Councilor Montoya asked if it goes back to Planning and Zoning and they choose not to approve
158 it then will it come back to the Council on appeal.

159
160 George Perez stated that it is in the Councils prerogative to remand it back to the Planning and
161 Zoning Commission. Reminded the Council that the reason for the denial is due to the fact the
162 Council approved the Special Use for the property.

163
164 Mayor Chávez stated there is a motion and a second to deny the appeal at this time and remand
165 this back to the Planning and Zoning Commission.

166
167 Roll Call Vote

168
169 Councilor Torres Yea
170 Councilor Jaramillo Yea
171 Councilor Montoya Yea

172
173

174 **APPROVAL OF MINUTES 6a) Regular Meeting of August 11, 2009**

175 Mayor Chávez stated on line 26 should read Fiesta Events not Cops in the Park.

176

177 Councilor Torres moved to approve the minutes of August 11, 2009 as amended. The motion
178 was second by Councilor Montoya and the motion carried unanimously.

179

180 **PERSONNEL: 7a) Fiestas Cleaning Crew (3). Presenter Yolanda Mora**

181 Yolanda Mora stated that it was the recommendation of the selection committee to hire Ernie
182 Vigil, Jesse Bowers, and Johnny Padilla as the Cleaning Crew members for the Fiestas from
183 8/8/09 to 8/11/09.

184

185 Councilor Jaramillo moved to approve the hiring of Ernie Vigil, Jesse Bowers, and Johnny
186 Padilla as the Cleaning Crew for the Fiestas. The motion was seconded by Councilor Montoya
187 and the motion carried unanimously.

188

189 **PERSONNEL: 7b) Animal Control Officer (1). Presenter: Yolanda Mora**

190 Yolanda Mora stated that it was the recommendation of the selection committee to hire Stacie
191 Huseman, as the Animal Control Officer for the Town of Bernalillo Police Department.

192

193 Councilor Torres moved to approve the hiring of Stacie Huseman, as the Animal Control Officer
194 for the Town of Bernalillo Police Department. The motion was seconded by Councilor Montoya
195 and the motion carried unanimously.

196

197 **NEW BUSINESS: 8a) Discussion, Consideration and Action on Approval of Lease**
198 **between the Town of Bernalillo and PB&J Family Services Inc. Presenter: Santiago**
199 **Chavez**

200

201 **Lease By and Between Town of Bernalillo**
202 **And**
203 **PB& J Family Services, Inc.**

204

205 **THIS AGREEMENT**, ("Lease") between the Town of Bernalillo, ("Town"), a political
206 subdivision of the State of New Mexico, as Lessor, and PB&J Family Services, Inc., ("PB&J"), a
207 New Mexico nonprofit corporation as Lessee establish the following:

208 **1. Recitals.** The Town is the owner of certain real property located in the Town of
209 Bernalillo, New Mexico, comprising approximately 3,650 square feet (formerly known as St.
210 Joseph's Manor), at 255 Camino Del Pueblo. The County desires to lease the north half of the
211 building (specifically 255-A Camino Del Pueblo) to PB&J , which has demonstrated a consistent

212 history of service to sick and indigent persons in connection with the child abuse prevention and
213 treatment programs it provides, and PB&J desires to lease from the Town the Premises in order to
214 provide services to sick and indigent persons in the Town of Bernalillo which services could legally
215 be expected to be provided by a governmental entity.

216 2. **Term and Option.** The terms of said Lease shall be for a five (5) year period
217 beginning September 1, 2009 (or beginning on the effective date hereof and ending five years
218 thereafter) through June 30, 2014 ("Term"). PB&J shall have the option to renew the term for five
219 (5) additional five (5) year option periods on the same terms and conditions provided that (i) PB&J
220 continues to provide services to sick and indigent persons in the Town of Bernalillo and (ii) PB&J is
221 not then in default under this Lease. Each such option shall be automatically exercised unless PB&J
222 provides prior notice that it does not exercise the option, or unless Lessor provides notice that either
223 condition set forth above has not been satisfied.

224 3. **Consideration.** The values sets forth in this paragraph represent the relative value of
225 the use of the Premises.

226 **A. Initial Term – Existing Premises.** PB&J will pay the Town an annual rent of
227 \$23,725 for the existing Premises which includes 3,650 square feet of usable building
228 area and all existing support buildings and indoor and outdoor improvements,
229 payable as set forth in Exhibit A attached hereto and incorporated herein.

230 **B. Options Terms.** At the conclusion of the initial term and at the beginning of
231 any option term exercised by PB&J, the annual rental payment set forth above shall
232 increase or decrease for the next succeeding five years. The annual rental payment for
233 the next five-year term shall be determined by comparing the “Beginning Index” with

234 the “Ending Index,” provided, however that any increase for the next term shall not
235 exceed three (3) percent. For purposes of this Lease, the “Beginning Index” shall be
236 the Consumer Price Index-U (CPI for all Urban Consumers), All Items, U.S. City
237 Average as published by the Bureau of Labor Statistics, United States government
238 (hereafter “CPI”) at the end of the month prior to the beginning of the expiring lease
239 term and the “Ending Index” shall be the CPI at the end of the last month prior to the
240 expiration of the expiring lease term. In the event the CPI is no longer published,
241 such index, as is then generally recognized and accepted for determining the increase
242 or decrease in purchasing power of the dollar, shall be used. The Town agrees to use
243 every effort to notify PB&J promptly of the increase or decrease as soon as
244 practicable after publication of the appropriate index and, in any event, at least 90
245 days after the expiration of the prior term.

246 **4. Use of Premises** . PB&J may use the Premises for program and administrative uses
247 that include services to sick and indigent persons in the Town of Bernalillo, or other similar
248 programs. PB&J shall not create a nuisance on the Premises. PB&J shall use the Premises at all
249 times in compliance with all applicable federal, state and local laws and regulations and only after all
250 necessary permits or licenses have been obtained.

251 **5. Utilities**. The Town of Bernalillo agrees to pay all utilities including but not limited to
252 water, sewer, refuse, electricity, and gas. With the exception of telephone and security monitoring
253 which will be paid for by PB&J.

254 **6. Insurance**. PB&J shall procure and maintain general liability Insurance, during the
255 life of this Lease. All insurance documents must include a provision for 30 day written notification

256 to the Finance Director (PO Box 638, Bernalillo, New Mexico 87004) if a policy has been materially
257 changed or cancelled. The Town shall be added as an additional insured and will be written on an
258 occurrence form, and shall provide limits as follows:

259 Commercial General Liability

260 (1) Bodily Injury/Property Damages \$1,000,000 Each Occurrence

261 \$2,000,000 General Aggregate

262 PB&J shall furnish one copy of the Certificates of Insurance herein required which shall
263 specifically set forth evidence of all coverage required under this Lease. If such limits are higher
264 than the minimum limits required by the Town such limits shall be certified and shall apply to
265 the coverage afforded the Town under the terms and written conditions of the contract. PB&J
266 shall furnish to the Town copies of any endorsements that are subsequently issued amending
267 coverage or limits.

268 If, during the life of this Lease, the Legislature of the State of New Mexico increases the
269 maximum limits of the liability under the Tort Claims Act, the Town may require PB&J to increase
270 the limits of such insurance and appropriate adjustment in the Lease amount will be made.

271 **7. Indemnification.** PB&J agrees to defend, indemnify and hold harmless the Town, its
272 officers and employees, against liability, claims, damages, losses or expenses arising out of bodily
273 injury to person, including death, or damage to property caused by or resulting from PB&J's and/or
274 its officials' and agents' negligent act (s) or omission(s) and/or from its officials, employees, and/or
275 agents performance or failure to perform its obligations and duties under the terms and conditions of
276 this Lease.

277 **8. Repair and Maintenance.** The Town will maintain the structure, roof, mechanical
278 systems, foundation, building exterior and plumbing of the Premises. PB&J will maintain the
279 Premises except to the extent the Town is obligated to do so pursuant to the preceding sentence and
280 shall at its sole cost and expense provide day-to-day maintenance and shall repair or replace any
281 damages caused by PB&J, its employees or invitees to the Premises promptly upon approval from
282 the Town. All such repairs and replacements shall be at least equal in quality of materials and
283 workmanship to the original work.

284 **9. Alterations and Improvements** PB&J shall not make any alterations, improvements,
285 additions or changes to the Premises, other than those required for the day-to-day maintenance of the
286 Premises, without the prior consent of the Town.

287 **10. Hazardous Materials.** PB&J will neither cause nor permit any Hazardous Material
288 (defined below) to be brought upon, kept or used in or about the Premises except as is reasonably
289 necessary and required for PB&J's customary operations. Any Hazardous Materials permitted on the
290 Premises will be used, stored and disposed of in strict accordance with applicable federal, state, and
291 local laws.

292 In the event of PB&J's breach of the foregoing covenants, PB&J accepts and affirms full
293 liability and responsibility for all costs and expenses related to, and indemnifies the Town from and
294 against any liability or damages related to, (i) any investigation of the Premises for the presence of
295 Hazardous Materials alleged to have been brought, used or disposed of on the Premises by PB&J and
296 (ii) the Hazardous Material clean-up, removal or restoration of the Premises required by a federal,
297 state or local governmental agency. PB&J's responsibilities and indemnity under this Lease will
298 survive the expiration or termination of this Lease.

299 As used herein, the term "Hazardous Material" means a substance the release of which on the
300 Premises would necessitate an environmental response action under any federal, state, county
301 or municipal law, whether now in effect or enacted in the future, and includes without
302 limitation asbestos in any form, formaldehyde, transformers or other equipment which
303 contain fluid containing polychlorinated biphenyls, any petroleum product in non-regulated
304 bulk storage containers, radon, or any other chemical, material or substance which is defined
305 or classified as hazardous or toxic or the exposure to which is prohibited, limited or regulated
306 by any federal, state, county, regional or local authority having jurisdiction.

307 **11. Assignment and Subletting.** PB&J shall not assign this Lease or sublet the whole or
308 any part of the Premises.

309 **12. Lessor's Access to Property.** Lessor will have free access to the Property at all
310 reasonable times for the purpose of examining the Property, to exhibit the Property to Lessor's
311 prospective purchasers or mortgagors of the Property, to determine if PB&J is performing this Lease,
312 and to post such reasonable notices as Lessor may desire to protect the rights of the Town. However,
313 the Town's access will be consistent with PB&J's privacy obligations to its clients, in connection
314 with applicable federal, state and local law and PB&J's operations.

315 **13. PB&J's Default.** If PB&J fails to perform the duties of PB&J under this Lease when
316 the duties are to be performed, PB&J will be in default under this Lease. If the default is not cured
317 within thirty (30) days after written notice of the default is given to PB&J, then Lessor may terminate
318 this Lease.

319 **14. Surrender Upon Termination.** At the expiration of the term of this Lease or upon
320 termination, PB&J shall surrender the Premises to the Town in as good as condition as it was in at
321 the beginning of the term, reasonable use and wear excepted.

322 **15. Notices.** All notices and other communications given as provided in this Lease will be in
323 writing, and, unless otherwise specifically provided in this Lease, will be deemed to have been given
324 if delivered in person, or sent by a nationally recognized overnight courier service, or mailed by
325 certified or registered mail, postage prepaid, and addressed to Lessor or PB&J at the following
326 addresses, unless either Lessor or PB&J changes the address of Lessor or PB&J by giving written
327 notice of the change to the other. The addresses for notice are:

328 (1) Notice to the Town:

329
330 Town of Bernalillo
331 PO Box 638
332 Bernalillo, NM 87004
333 Attn: Town Manager

334
335 (2) Notice to PB&J:

336
337 PB&J Family Services, Inc.,
338 255-A Camino Del Pueblo
339 Bernalillo, NM 87004
340 Attn: Troy Martinez, Executive Director of Operations

341
342 **16. Waiver; Remedies.** No waiver of any default as provided in this Agreement or delay
343 or omission in exercising any right or power of the Town or PB&J will be considered a waiver of any
344 other default as provided in this Lease. The exercise of or failure to exercise any one of the rights
345 and remedies of the Town or PB&J as provided in this Lease will not be deemed to be instead of, or
346 a waiver of, any other right or remedy as provided in this Lease.

347 **17. Entire Agreement.** This Lease constitutes the entire agreement of the Town and
348 PB&J relating to the subject matter hereof and supersedes all previous agreements, written or oral,
349 between the Town and PB&J on such subject.

350 **18. Partial Invalidity.** If any term of this Lease, or the application of the term to any
351 person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the
352 application of the term to persons or circumstances other than those as to which the term is held
353 invalid or unenforceable, will not be affected by the application, and each term of this Lease will be
354 valid and be enforced to the fullest extent permitted by law.

355 **19. Miscellaneous.** This Lease is governed by and will be construed according to the
356 laws of the State of New Mexico and binds the successors, transferees and assigns of the parties.
357 This Lease, between the Town and PB&J for property located at 255-A Camino Del Pueblo,
358 Bernalillo, NM 87004, may be amended only in writing signed by both parties. This Lease replaces,
359 terminates and supercedes the terms of any prior existing leases entered into between the parties
360 regarding the Premises.

361 Mayor Chávez entertained a motion.

362

363 Councilor Jaramillo moved to approve the Lease between the Town of Bernalillo and PB & J
364 Services Inc. The motion was seconded by Councilor Montoya and the motion carried
365 unanimously.

366

367 **MISCELLANEOUS: 9a) Capital Improvement Project Update. Presenter: Maria**
368 **Rinaldi**

369 Maria Rinaldi gave an overview of all Capital Project in the Town of Bernalillo.

370

371 **MISCELLANEOUS: 9b) Wine Festival Update. Presenter: Ida Fierro**

372 Ida Fierro gave an overview on all the details of the Wine Festival.

373

374 **MISCELLANEOUS: 9c) Town Administrator Update. Presenter: Santiago Chavez**

375 Santiago Chavez stated that the Town Administrator position has been advertised in the

376 Albuquerque Journal September 2 to September 6 2009.

377

378 **FINANCIAL SECTION:10a) Approval of Account Payable List.**

379 Councilor Montoya stated that if there is any question about DW Turner payment of \$24,094.01
380 would we be paid back after the State Police investigation is complete.

381

382 George Perez stated that if DW Turner was found guilty they would be ordered to pay back the
383 Town.

384

385 Councilor Jaramillo stated that it was her wish that the \$3,000 for Stephen Jerge crisis
386 management included on the \$24,094.01 DW Turner invoice would have been taken out until
387 the investigation was completed.

388

389 Councilor Torres made a motion to approve the vouchers in the amount of \$302,372.09. The
390 motion was seconded by Councilor Montoya and the motion carried unanimously.

391

392 There being no further business, the meeting was adjourned at 8:30P.M.

393 Done this 24th day of August 2009.

394

395 ATTEST:

396

397

398 _____
398 Ida Fierro, Town Clerk

399 (seal)

Patricia A. Chávez, Mayor